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**Report to the European Commission
on Group Supervision and Capital
Management with a Group of Insurance or
Reinsurance Undertakings,
and FoS and FoE under Solvency II**

Table of Contents

Executive summary.....	5
1 EIOPA's involvement in promoting supervisory convergence in group supervision, and supervision of cross-border business activities (FoS/FoE)	21
2 EIOPA's and other key info publicly available on the topics queried by the COM	23
3 COM's Request by sections	24
3.1 Early Intervention.....	24
3.1.1 COM's Info Request.....	24
3.1.2 Findings.....	24
Reflections 3.1 – Early Intervention.....	30
3.2 Practices in Centralised Group Risk Management and functioning of group internal models including stress testing.....	31
3.2.1 COM's Request.....	31
3.2.2 Findings on Practices in Centralised Group Risk Management (CRM)	31
3.2.3 Findings on Functioning of Group Internal Models including Stress Testing ...	34
3.2.4 Reflections on CRM; and Internal Models	39
3.3 Intra-group transactions and risk concentrations	41
3.3.1 COM's Request.....	41
3.3.2 Findings on Intra-group Transactions (IGTs) and Risk Concentrations (RCs).	41
3.3.5. Reflections on IGTs & RCs.....	50
3.4 Diversification Effects between undertakings of a given group	52
3.4.1 COM's Request.....	52
3.4.2 Findings on Diversification Effects between undertakings of a given group ...	52
3.4.3 Reflections on Diversification Benefits	56
3.5 Mediation of supervisory disputes.....	58
3.5.1 COM's Request on Mediation of Supervisory Disputes	58
3.5.2 Findings on Mediation of Supervisory Disputes	58
3.5.3 Reflections on Mediation of Supervisory Disputes	59
3.6 Barriers to Asset Transferability	60
3.6.1 COM's request on Barriers to Asset Transferability	60
3.6.2 Findings on Barriers to Asset Transferability.....	60
3.6.3 Findings on Own Funds – Classification of own fund items.....	68
3.6.4 Reflections on Restrictions to Asset Transferability	70
3.7 Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations.....	72
3.7.1 COM's Request on Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations	72
3.7.2 Findings on Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations	72
3.7.3 Reflections on Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations	77
3.8 Insurance Guarantee Schemes	78
3.8.1 COM's Request on Insurance Guarantee Schemes.....	78
3.8.2 Findings on IGS and Other info requested by COM	78
3.8.3 Reflections on Insurance Guarantee Schemes, including Motor Insurance Schemes	85
3.9 Scope of Group Supervision	86
3.9.1 COM's Request on Scope of Group Supervision.....	86
3.9.2 Findings on Scope of Group Supervision	86
3.9.3 Reflections on Scope of Group Supervision	93
3.10 Group Solvency calculation and group supervision.....	95
3.10.1 COM's Request on Group Solvency Calculation and Group Supervision	95
3.10.2 Findings on Group Solvency Calculation and Group Supervision	95
3.10.3 Reflections on Group Solvency Calculation; and others	106
3.11 Freedom of establishment and freedom to provide services.....	108
3.11.1 COM's Request on Freedom of establishment and freedom to provide services.	108
3.11.2 Findings on Freedom of establishment and freedom to provide services... ..	108
3.11.3 Reflections on Freedom of Establishment and Freedom to provide services	118

Annex I: Powers available to NCAs to intervene at an early stage based on a survey carried out in 2017.	120
ANNEX II – IGTs and RCs (Data Analysis)	121
ANNEX III- Non Available Items in Accordance to Article 330 of the Delegated Regulation (Data Analysis)	130
ANNEX IV- Main barriers/ restrictions to asset transferability posed by national law regarding insolvency and winding-up legislation	131
ANNEX V- Overview of existing MID schemes and national IGSs	134
Annex VI– Cases where Article 214(2) (b) of the Solvency II Directive has been applied	141
Annex VII– issues for consideration by EIOPA in the request from the Commission	143

Executive summary

Background to the Information Request

- 1.1. This report is addressed to the European Commission and is a response to its request for information on various aspects of Group Supervision of Insurance and Reinsurance Undertakings in a Group as outlined in Article 242(2) of Directive 2009/138/EC ("Solvency II Directive"), and specific topics related to the freedom to provide services (FoS) and freedom of establishment (FoE) (see Annex VII).
- 1.2. This report should be read in conjunction with another report previously issued by EIOPA to the European Commission on the Application of Group Supervision under the Solvency II Directive (EIOPA 17-648 of December 22 of 2017) which was based on the Commission's request on Article 242(1) of the Solvency II Directive.¹
- 1.3. The background to the Commission's request is Article 242 (2) of Solvency II:

By 31 December 2018, the Commission shall make an assessment of the benefit of enhancing group supervision and capital management within a group of insurance or reinsurance undertakings including a reference to COM(2008)0119 and the report of the Committee on Economic and Monetary Affairs of the European Parliament on this proposal of 16 October 2008 (A6-0413/2008). That assessment shall include possible measures to enhance a sound cross- border management of insurance groups notably of risks and asset management.
- 1.4. The aim of this report is to provide information based on the Commission's request. EIOPA is not asked to formulate technical proposals for the amendment of the Solvency II Directive at this point in time.
- 1.5. The reader should note that the Commission's request is beyond the scope of Article 242(2) of Solvency II Directive, and includes other aspects related to supervision of groups, as well as specific topics related to supervision of cross-border business like FoS and FoE.

Introductory Comments

- 1.6. Before the implementation of Solvency II, some of the challenges encountered in exercising an effective application of group supervision concentrated on: the adequacy of supervision of intra-group transactions; the risk that groups could be under-capitalised due to double gearing of capital; insufficient cross-border cooperation on the supervision of groups with the particular challenge of efficient supervision of groups with their head office outside the EEA.
- 1.7. The Solvency II Directive brought a risk-based approach. Moreover, it brought a clear supervisory framework for group supervision, where groups are treated as

¹ Link to the COM's Request: <https://eiopa.europa.eu/Publications/Requests%20for%20advice/I-2018-168%20Annex%20COM%20Request%20to%20EIOPA%20for%20a%20report%20%28GBE%29.pdf>

“single economic entities”. The supervisory requirements for groups were made comparable to those applied to solo undertakings, and the solo requirements apply mutatis mutandis in many cases. The framework applicable to groups also benefits from the proportionality principle and the framework seeks to reduce any unduly burdensome requirements by taking into account the nature, scale and complexity of the operations and business model of the group and the solo undertakings.

- 1.8. In respect of supervision, the implementation of Solvency II helped National Competent Authorities (NCAs) and EIOPA to manage some of the challenges previously identified.

- 1.9. In the context of tools developed by EIOPA to strengthen group supervision, and supervision of cross-border issues (between solo undertakings but also among groups) substantial progress has been made to support National Competent Authorities. For instance, by:
 - EIOPA’s development of Opinions, Guidelines, and other communications on key Solvency II topics.
 - EIOPA’s development of a supervisory handbook supported by an adequate training program where supervisory knowledge and experiences are exchanged.
 - EIOPA’s recommendations to NCAs and group supervisors following bilateral interaction and work with Colleges
 - Strengthened Cooperation and joint efforts among EU supervisory authorities and international supervisors is recently shown by:
 - Setting up cooperation platforms and proto-colleges
 - Issuing a Decision on the collaboration of the insurance supervisory authorities (EIOPA-BoS-17/014).
 - Issuing the Opinion to Institutions of the European Union on the Harmonisation of Recovery and Resolution Frameworks for (Re)Insurers across the Member States (EIOPA-BoS/17-148)

- 1.10. Nonetheless, there are gaps in the regulatory framework leading to divergent supervisory practices as noted in this report. For instance:
 - Definition of intra-group transactions (IGTs); and reporting of IGTs (Section 3.3)
 - Clarity on the application of the Method 2 rules to Combination of Methods (Section 3.10)
 - Assessment of availability of eligible own funds at group level (Section 3.6)
 - Treatment of Insurance Holding Companies (IHC)/Mixed Financial Holding Companies (MFHC) (Section 3.9 and Section 3.10)
 - The inclusion of holding companies, which are not licensed insurance undertakings, in the scope of group supervision (Section 3.9)
 - The use of article 214(2)² of the Solvency II Directive (Section 3.9)
 - The ability to ask for a European holding company (Section 3.9)
 - Group supervision of horizontal groups (Section 3.9)

² On Scope of the group supervision

- 1.11. The report also identifies that effective supervision of insurance groups will benefit from a harmonized approach on:
- Early intervention (Section 3.1)
 - A recovery and resolution (Section 3.7)
 - The assessment of group own funds (Section 3.6)
 - Supervisory Colleges (EIOPA 17-648 report of December 22 of 2017)³
 - Cross-border business activities provided by groups and solo undertakings through FoS and FoE⁴ (section 3.11)
- 1.12. The findings to the COM's Request on Article 242(2) of the Solvency II Directive and FoS & FoE are summarized in the next paragraphs:

Summary of findings by each of the sections requested by the Commission

Section 3.1 Early Intervention

- 1.13. EIOPA acknowledges the limitations in early intervention powers and measures available and used in each jurisdiction. More than half of Member States reported that they have no explicit powers in addition to the Solvency II framework within local legislation regarding intervention in case of deterioration of the financial position at Group level.
- 1.14. Additionally the majority of the Member States report they do not use any triggers for early intervention while the other apply different approaches (see graph under paragraph 3.24). EIOPA notes, in line with the Opinion on Recover and Resolution, there is a need for a common set of early intervention powers for NCAs, which would allow them to intervene in a similar way at a sufficient early stage to avoid the escalation of problems both at solo and group level, i.e. potential non-compliance with the SCR.
- 1.15. A harmonised recovery and resolution framework should introduce a common set of early intervention powers for NCAs which are compatible with the Solvency II framework. The lack of such harmonised minimum set of powers creates difficult situations in particular when addressing cross-border groups and cross-border supervision in general.
- 1.16. The introduction of early intervention powers should especially not result in a new pre-defined intervention level or capital requirement beyond what is envisaged in

³ As noted in EIOPA's 2017 report to the European Commission on the Application of Group Supervision under the Solvency II Directive (EIOPA 17-648 of December 22 of 2017) , supervisory colleges generally function well, but there is scope for colleges and group supervision to develop further in the direction of effective collaboration and sharing of tasks within the college.

⁴ See also EIOPA BoS Decision (EIOPA-BoS-17/014)

Solvency II.

- 1.17. A clarification of the application of Article 141⁵ of the Solvency II Directive at group level could be considered together with the common set of early intervention powers for NCAs which are compatible with the Solvency II framework (see paragraph 3.18).

Section 3.2 Practices on Centralised Risk Management (CRM)

- 1.18. Based on the information shared by the relevant national competent authorities within the college of supervisors and the responses from the NCAs to the online survey on the COM's request, EIOPA is not aware of any cases of centralised group risk management agreements reached under Article 237 of Solvency II Directive.
- 1.19. Key challenges related to the use of the regime of CRM are provided in the main body of the document (see paragraphs 3.41 to 3.49). EIOPA believes that the CRM regime will continue to be unused unless clear benefits to the groups are defined. It is not adequate to promote a discussion of a group support regime as it is referred to in COM(2008)0119 and in the report of the Committee on Economic and Monetary Affairs of the European Parliament on this proposal of 16 October 2008 (A6-0413/2008) at this moment. It is also not clear whether such a regime should be discussed in the near future either, if taking into account that the responsibility remains on the solo supervisors. An additional factor for the successful supervision of CRM groups is the strong dependency on the effectiveness of supervisory colleges in agreeing on certain decisions for a subsidiary covered by CRM that otherwise would have been decided solely by the solo supervisor (e.g. capital add-ons and the use of undertaking specific parameters).

Section 3.2 Functioning of group internal models including stress testing

- 1.20. There are 37 internal models at group level, 28 of these use method 1 (consolidation method), 9 use combination of methods. NCAs do not report specific issues on group internal models and in general NCAs are satisfied with the means available. Further insights on the specific questions posed by the COM are found in the main body of the document. NCAs indicate in their responses to the survey that the Solvency II Directive offers them necessary measures and flexibility which is required for the supervision of internal models for groups. It allows NCAs to effectively assess, authorise and monitor the appropriateness of internal models.
- 1.21. It is noted that integration techniques were initially designed with the intention of integrating risks and not companies. Therefore, the application of them for the purpose of integrating a company into the group in group solvency calculation may be challenging. In particular, some dependencies between undertakings may not be reflected. Other challenges may come from the interaction with the choice of the method to be used for the calculation of the group solvency.

⁵ Article 141 of the Solvency II Directive refers to supervisory powers in deteriorating financial conditions.

- 1.22. There are divergent practices with regard to some aspects of the internal models that could have a relevance at group level in a cross border context or with regard to the differences between the solo and group internal model. For example, currently, some Member States allow the use of the dynamic Volatility Adjustment (VA), whereas others prohibit it. This will also be subject to the review of the implementation of the EIOPA opinion on the dynamic VA. As an additional example, some internal models cover sovereign credit risk, or model it to a lower extent, others do not model it. The factual situation is monitored by the comparative studies on market and credit risk.
- 1.23. Furthermore, EIOPA notes that internal model reporting is tailored to the specific models and current needs of the NCAs concerned with the supervision of these models. Consequently, the reporting requirements imposed by NCAs to internal model users vary, with respect to quantitative reporting, including standard formula results, as well as e.g. reports on model parameters and changes to them. As laid out in the supervisory convergence plan 2018-2019, EIOPA assesses whether and how quantitative reporting requirements can be improved so as to lay the foundation for future internal model ongoing appropriateness indicators. In this context, EIOPA is also assessing, whether it is sufficient for supervisory purposes to be in a position to receive standard formula figures only by a reasoned request and for major model changes.
- 1.24. Regarding EIOPA's activities on internal models we especially refer to the current supervisory convergence plan as well as the planning documents. Furthermore, the role of EIOPA is considered in the context of the ESAs review.

Section 3.3 Intra-group transactions (IGTs) and risk concentrations (RCs)

- 1.25. EIOPA has identified a gap in the definition of IGTs as provided in Article 13(19) of the Solvency II Directive, which leaves room for interpretation both among supervisors and industry. Such a gap has a direct impact on an effective supervision of IGTs as well as on appropriate data reporting comparisons. The definition does not explicitly include the reference to the Insurance Holding Companies (IHC), Mixed Activities Insurance Holding Companies (MAIHC) or Mixed Financial Holding Companies (MFHC) as one of the possible counterparties of the IGT. The definition is also not clear on the scope for reporting on natural persons that are related parties (e.g. at Board Members, Supervisory Board Members, and/or also at his/her family members). Hence, the possible solutions could include a mixed approach. Firstly by amending the wording in Article 13(19) to include also IHC, MFHC, MAIHC and third country (re) insurance undertakings. Secondly, by reviewing any reporting guidelines to ensure a consistent approach across Europe.
- 1.26. Furthermore, another challenge identified relates to the cases of third country groups with no EU group supervision where the level of details about the IGTs and RCs is not the same as for the EU groups and the information provided depends on the third country supervisor and might not include relevant information for the major solo companies. This issue may need to be addressed on a case-by-case basis but should always aim for supervisory convergence across European group supervisors.
- 1.27. EIOPA notes that there is not a specific definition of Risk Concentration in the

Solvency II Directive. Article 13(35) of the Solvency II Directive defines concentration risk and Article 376 of the Delegated Regulation sets out the list of direct and indirect exposures to be considered for the purpose of identifying significant RCs.

- 1.28. EIOPA notes in overall the challenge posed on the supervision of IGTs and RCs, in particular regarding the application of thresholds. Setting thresholds that are too high or too low may impair the analysis of transactions that can be important in understanding the overall risks of the group. Thus, it is EIOPA's view that further convergence can be sought and the regulatory framework could benefit from further guidance for setting up thresholds and supervision of IGTs and RCs. It is also reflected that thresholds should be seen both from a quantitative and qualitative point of view.
- 1.29. Based on the experience collated during EIOPA Oversight activities, the importance of an effective and consistent implementation of a supervisory review process of IGTs and RCs, and focus on the interconnectedness of insurance groups is noted.

Section 3.4 Diversification Effects

- 1.30. Based on the responses from NCAs, it is indicated that the diversification effects of the groups under their supervision are aligned to their understanding of groups. It is also indicated that group supervisors are not aware of any differences between a group's perception of the major diversification benefits and the group's supervisor perception of the diversification benefits.
- 1.31. EIOPA's understanding is that the analysis of diversification effects carried out by the NCAs benefits from the information that supervisors receive from the participating (re)insurance undertaking, the IHC or the MFHC under Article 246(4) of the Solvency II Directive and Article 359 (e) (iv) of the Delegated Regulation. In this regard, the quality and granularity of information provided to group supervisors varies, taking into account that there is no minimum harmonised reporting structure for diversification benefits.
- 1.32. EIOPA notes that NCAs have different approaches to analyse diversification benefits. In most cases NCAs described in their response to EIOPA's survey, the supervisory approach is tailored to the risk, nature, scale and complexity level and scope of the groups, and combines both a qualitative and quantitative analysis. Supervisors support their analysis with information available in Own Risk Solvency Assessment (ORSA) and the Solvency Financial Condition Report (SFCR) and check whether the extent of the diversification benefit taken into account by a group is consistent with their understanding of the group risks.
- 1.33. It is also noted that diversification benefits in practice are more often analysed for groups that have applied for a Solvency II internal model to calculate its solvency requirements because the calculation methodology is not standardized and the aggregation approach was tailored to the concrete case and hence has more attendance.

- 1.34. EIOPA also notes that there are challenges in carrying out a meaningful comparative analysis of diversification effects across groups due to the intrinsic nature of each group. Another challenge for EIOPA is currently posed at times by the data availability and quality of the information in the Quarterly Reporting Templates (QRTs).
- 1.35. In EIOPA's view, a detailed analysis of the diversification effects is a priority for all groups independently of the approach used to calculate solvency requirements (Standard Formula or Internal Models). It is also recognized by NCAs that there is a need to further deep-dive into the understanding and analysis of diversification effects. Preference is to have a combination of quantitative and qualitative analysis that supports supervisory judgment.
- 1.36. Some group supervisors would welcome a minimum level of convergence regarding reporting disclosures⁶ for diversification. While other group supervisors point out, that a full standardized single approach for such analysis is not practicable and may thus not be favoured in all cases given the complexity and peculiarity of each group. In this regard a combination of tools could be used, subject to a detailed assessment, to improve supervisory convergence (e.g. potentially reviewing some of the reporting templates, as well as setting a minimum level of information and structure in which groups should share info with their group supervisors for discussion at the colleges)⁷.
- 1.37. EIOPA's comments on the supervisory practices regarding how the solo SCR might be seen as a barrier to transferability of own funds in accordance with Article 330 of the Delegated Regulation (EU) 2015/35 and their impacts is presented in Section 3.6 of this report.

Section 3.5 Mediation Disputes

- 1.38. EIOPA notes that the NCAs have not made a request to EIOPA under the relevant provisions of the Solvency II Directive for binding mediation in the field of group supervision.
- 1.39. EIOPA has been approached by NCAs regarding non-binding mediation of cross-border issues. Most recently, EIOPA issued its first mediation opinion and there are other ongoing proceedings.
- 1.40. Based on the current experience with non-binding mediations, EIOPA is of the view that the current empowerments in the Solvency II Directive are not sufficient to tackle the wide range of disputes between home and host supervisors in cross-border situations. Therefore, it is EIOPA's view that it could be appropriate to introducing a separate empowerment to cover also cross-border issues by mediation could be useful to effectively tackle such supervisory disputes.

⁶ Other than what is currently provided in the QRTs. (As the info on the QRTs is not sufficient for supervisory analysis)

⁷ This may need a legal support and to be discussed at colleges.

Section 3.6 Barriers to Asset Transferability

- 1.41. EIOPA is aware that in the majority of the Member States national law (e.g. company or corporate laws, insolvency/winding-up law, etc.) can pose clear barriers to asset transferability within a group both in case of insolvency and winding-up and in case of capital management situations. For cross-border groups, additional challenges in assessing transferability of assets are derived from the complexity of the supervisory exercise, which requires deep knowledge of the various jurisdictions where the group operates to assess if there are any restriction on the transferability of own funds instruments. Further challenges arise for groups that operate in third countries.
- 1.42. EIOPA notes that the subject of adequately assessing eligible own funds at group level will benefit greatly from having a clearer regulatory stand on some of the issues noted in the report to ensure a consistent approach across all Member States.
- 1.43. EIOPA is aware of the challenges faced by group supervisors in effectively carrying out an assessment of eligible own funds at group level under Article 330 of the Delegated Regulation. One of them relates to the consideration of whether the solo SCR should be seen as a barrier to the transferability of group own funds. In this regard, an answer to a question was published by EIOPA (Q&A 438). When approving this answer EIOPA's Board of Supervisors acknowledged the need to continue to work on further enhancing the convergence of supervisory practices in this area. EIOPA also notes that a solution from a regulatory point of view cannot be excluded from the options available in dealing with this issue.
- 1.44. Another challenge derived from the practical application of the criteria set out in Article 330 of the Delegated Regulation, for instance, how to effectively assess the 9 months criterion in practice (e.g. that groups can effectively demonstrate that the group can make own funds available in such a period). A supervisory question is at times if the 9 months period sets a realistic timeframe and an effective criterion for assessment of availability of own funds at group level. This can be considered both from a legal and supervisory practice point of view.
- 1.45. EIOPA highlights the importance that effective supervision of the availability at group level of the eligible own funds of related undertakings can be effectively carried out by the group supervisor, and, notes divergence of practices regarding the assessments carried out under Article 330 of the Delegated Regulation. EIOPA acknowledges that this is an area for continued work in enhancing convergence of supervisory practices. NCAs also recognize, based on the discussions on this topic, that group own funds (including the assessment of availability of eligible own funds) could benefit from further regulatory clarity and supervisory practices' analysis to ensure a strong and mature practice on group own funds across Europe.
- 1.46. EIOPA also notes that the discussions on barriers to asset transferability should be considered in conjunction with any findings noted on early intervention for groups (section 3.1) as well as the topic on classification of own funds queried by the COM under the section related to the level of protection of policyholders and

beneficiaries of the undertakings of the same group, particularly in crisis situations (section 3.6.3)

- 1.47. Adequate guidance in the classification of own fund items at group level is of utmost importance in ensuring that policyholders and beneficiaries of (re)insurance undertakings belonging to a group are adequately protected. For instance, the encumbrance assessment, which is carried out at solo level may require additional assessment from a group point of view. It is noted, that in practice, some group supervisors carry out additional assessments tailored to groups to ensure that own funds classification criteria is met at group level as well. For instance, recital 127 of the Delegated Regulation provides guidance on how to assess encumbrances. However, the absence of a clear provision in the Delegated Regulation reflecting this recital, as well as the uncertainty regarding the scope of application and enforceability of this recital on groups, leads to potential divergent implementations in different jurisdictions.
- 1.48. In addition, further guidance is needed on the requirement to include a reference to the group SCR for the purpose of the classification of own funds items of IHC, MFHC and (re)insurance undertakings in accordance with Articles 331 to 333 of the Delegated Regulation. This issue also relates to the own funds items issued by third country undertakings. Finally, the treatment of own funds items belonging to other financial sectors would also benefit from further clarity.

Section 3.7 Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations

- 1.49. There is a fragmented landscape with diverging national legislations and approaches with respect to recovery and resolution. As a result, different powers may not guarantee an equivalent level of protection of policyholders and beneficiaries of the same group involving undertakings in different Member States.
- 1.50. Given the feedback received on the Survey for this request, EIOPA considers that -in crisis situations- the risk that diverging interests occur across Member States remains, thereby potentially prioritizing the protection of policyholders at a local level, and hindering cross-border cooperation.
- 1.51. As stated in the Opinion on recovery and resolution⁸, EIOPA is of the view that there is a need for a minimum harmonised framework for the recovery and resolution of (re)insurers. This would facilitate cross-border management of insurance crises.

Section 3.8 Insurance Guarantee Schemes, including Motor Insurance Schemes

- 1.52. This section is based on EIOPA's "Discussion Paper on resolution funding and national insurance guarantee schemes" (July 2018).

⁸ EIOPA's Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for (re)insurers across the Member States, 2017.

- 1.53. All EU countries have set up or authorised a body with the task of providing compensation in line with Article 10 of Directive 2009/103/EC (MID). There are, however, certain differences in terms of the funding of such bodies.
- 1.54. When it comes to IGSs (as defined in this document), the situation is far more fragmented with some countries having more than one IGS, while others have no IGS at all. There are also substantial differences with respect to the lines of business covered and their funding.
- 1.55. EIOPA is of the view that a minimum degree of harmonisation in the field of IGS would benefit policyholders, the insurance market and more broadly contribute to the financial stability in the EU, also considering the need to have a harmonised recovery and resolution framework in place. A harmonised approach should take into account the existing national schemes.

Section 3.9 Scope of Group Supervision

- 1.56. EIOPA notes that the definition of a group (Article 212(1)(c)) of the Solvency II Directive works fine with a few exceptions that need attention: (a) individual undertakings “acting in concert”⁹; (b) third country groups with multiple entry point in the EEA; (c) EEA supervised insurance undertakings with the same ultimate third country parent. Horizontal groups, third country investors owning several insurance companies and groups in the EEA are hard to be brought under the definition of “group” under Article 212(1)(c) because a “centralised co-ordination” can be difficult to prove at times. The term centralised coordination needs further clarification.
- 1.57. EIOPA also notes the issues concerning the definition of holding companies (IHC, MAIHC) is a recurrent topic noted by the NCAs. There is no consistency on the application of Article 212(1)(f) and (g) of the Solvency II Directive leading to supervisory convergence matters as well as potentially created competitive (dis)advantages for certain groups depending on the interpretation by the group supervisor and/or national transposition issues.
- 1.58. EIOPA has also noted that there may be different supervisory approaches regarding the exclusion of a company from the scope of the group supervision. Supervisors indicate the analysis is carried out on a case-by-case basis but there may not be full consistency on the application across Member States, e.g. a group supervisor from a different Member State could possibly come to a different conclusion due to how the supervisory processes and supervisory judgment is applied. For instance, it is noted that there were several cases of exclusion of the top holding in the European Economic Area (EEA), as the NCA qualified the holding as “negligible interest” for the group supervision.
- 1.59. The term “negligible interest” of Article 214(2)(b) of the Solvency II Directive needs further guidance through supervisory convergence tools. In numerous cases, small solo entities are exempted from supervision, especially in the case of

⁹ The notion of “acting in concert” seems to be introduced by the 88/627/EEC Directive, Article 7. See further details under Section 3.9

small subsidiaries of national groups, where the exclusion of undertakings from supervision does not have to be consulted with other supervisors.

- 1.60. Another risk of non-convergence, are the cases where holding companies at the top of the group are exempted from the scope of the group and instead the group solvency is applied at the next level. This could lead to substantial capital relief for the group SCR which is then calculated at sub-holding level in those cases where the top holding is not the entire owner of the group. The criterion for exemption of the scope of supervision is something that could be further clarified and developed. A convergent application of Article 214(2)(b) of the Solvency II Directive would be better assured by a process in which EIOPA is consulted before the final decision for exemptions are taken by the NCA.
- 1.61. EIOPA notes that some Member States have created additional regulation to close any of the above-mentioned gaps, therefore, such Member States have indicated that they have no identified issues with the scope of the group supervision. Nonetheless, in absence of such additional national regulations those jurisdictions would have encountered the same challenges as faced by other group supervisors.
- 1.62. Further guidance in the case of the equivalence assessment of the provisions of the Solvency II Directive and Directives 2002/87/EC and 2013/36/EU is needed as guidelines and regulatory technical standards envisaged in Article 213(6) of the Solvency II Directive are still not developed.
- 1.63. There are several insurance undertakings licensed in different EEA Member States, which are owned by the same or by several related undertakings located in third countries. In these cases was not possible to use Article 247(2) of the Solvency II Directive to identify a group supervisor. The NCAs need to rely on the third country parent company for information. Two proto colleges were set up¹⁰ with all concerned NCAs to exchange information and assess potential risks stemming from the activities and uncertainties on the strategy of the ultimate parent. Cooperation takes place on a voluntary basis and EIOPA also set up cooperation with the third country supervisor of the ultimate parent. A formalisation of proto colleges and the necessary information exchange between its members as well as the role of EIOPA would support the effectiveness of the proto college.¹¹

Section 3.10 Group Solvency Calculation

- 1.64. Given the complexities regarding the calculation of group solvency, certain level of expertise among group supervisors is required. It is noted that such knowledge is usually concentrated among a few experts across NCAs.
- 1.65. EIOPA notes, based on the information received and discussions at various Expert Networks, that there are general areas where group supervisors can benefit from

¹⁰ Two proto colleges were set up in 12/2015. However, one proto college is only currently operating.

¹¹ Extra resources would also be needed for EIOPA to execute this task.

further clarifications regarding the interpretation of the regulations and/or detailed technical guidance. The next paragraphs provide some examples of areas where NCAs indicate that could benefit from clarifications.

- 1.66. For instance, regarding the application of Method 1, questions often arise on:
- Issues regarding the inclusion of related non-regulated undertakings, including intermediate IHCs and MFHCs;
 - Issues regarding the determination of consolidated data.
- 1.67. In relation to the application of Method 2 and Combination of Methods, there is a clear gap in the regulatory framework regarding:
- Adequate application of the Combination of Methods, e.g. how to deal with the group solvency capital requirements when using the Combination of Methods (e.g. lack of clarity when the principles of Method 1 should prevail over principles of Method 2, or vice versa);
 - Inclusion of insurance holding companies and mixed financial holding companies
 - Other issues about the application of Method 2 and the Combination of Methods are related to third country solvency requirements to be taken into account in the group solvency calculation, in case of equivalence.
- 1.68. EIOPA also notes that there is a general need to address the referencing from the Solvency II framework to Other Financial Sectors (OFS). Solvency II places reliance on the regulatory framework of OFS. However, clarification is needed on how and what to include regarding related OFS that are calculated according to sectoral rules. For instance, how to ensure adequate classification of own funds and to what extent availability assessment should be applied.
- 1.69. On the application of *mutatis mutandis* to groups, most challenges are encountered in relation to:
- Systems of Governance;
 - Fit and proper requirements for the administrative, management or supervisory body (AMSB) of IHC and MFHC;
 - Access to information for supervisory purposes;
 - Capital add-ons;
 - Determining whether eligible own funds qualify to cover the minimum consolidated group solvency requirement;
 - Transitional measures
 - Transposition into national law.
- 1.70. It should also be noted that some NCAs indicated that they face no challenges regarding the application of some of the *mutatis mutandis*, but this does not mean that they never faced any challenge. In some cases, NCAs found a way to reduce such a gap by establishing additional rules at national level so that they could ensure consistency of application of the law for the solos and groups under their supervision. However, interventions implemented in the national law by

NCAs, made necessary by the European framework, and the different interpretations linked to the concrete definition of the principle of *mutatis mutandis* of the individual provisions at group level, do not ensure a European harmonized approach.

- 1.71. Although some of the issues related to application of *mutatis mutandis* are recognized by EIOPA and addressed by EIOPA specific tools to support supervisory convergence (e.g. opinions, guidelines, questions and answers), EIOPA in conjunction with the NCAs believes there is a need for development of a more detailed and concrete definition of the application of the principle of *mutatis mutandis* of certain individual provisions to the group supervision. This is noted in the main body of the report.¹²

Section 3.11 Freedom of Establishment and Freedom to Provide Services (FoE and FoS)

- 1.72. EIOPA offers tools to strengthen supervision of cross-border business (e.g. EIOPA's Board of Supervisor's Decision on the Collaboration of the insurance supervisory authorities), including co-operation platforms that are recognized as an improved supervisory tool in European supervision in the case where there is no group supervision established. Nonetheless, cross-border supervision is not free from challenges, and a continued effective collaboration between home and host supervisors to discuss undertakings operating on a FoS and FoE basis is a must. This includes regular exchange and sharing of information that is useful to set good preventive measures and allows for early identification of potential issues. Although it is noted by EIOPA and NCAs that collaboration between NCAs on cross-border issues has been improved after the signature and the application of the Decision on the collaboration of the insurance supervisory authorities, there is still room for improvement in certain areas.

- 1.73. The COM specifically asked about any lack of supervisory powers related to insurance activities conducted under the Freedom to Provide Services, or omissions of exercising such powers. From the responses received, NCAs reported general issues in the context of FoS and FoE including information exchange. The following cases are specifically noted regarding challenges encountered:

- 4 NCAs claimed a lack of prudential powers as a host supervisor.
- 7 NCAs claimed lack of powers as a conduct host supervisor.

The lack of powers is emphasized especially in those cases where the insurance activity is carried out exclusively or almost exclusively on a freedom of services basis outside the home jurisdiction.

See further details of various cases presented in the main body of the report (e.g. information on exchange issues, reserving issues, governance issues, distribution issues, complaints handling issues, notification issues, reporting issues).

- 1.74. EIOPA notes that the reliance on the home country approach requires strong

¹² The preference would be to adopt a policy stand either at Level 1 (Directive) or at the Level 2 (Delegated Regulation) for some of the cases presented in this report. However, this will require a policy analysis of its own.

collaboration among home and host supervisors to avoid arbitrage and to ensure a similar level of protection to policyholders across the EEA regardless of the location of the undertaking's head office. NCAs have indicated that this is emphasised especially in those cases where the insurance activity is carried out exclusively or almost exclusively on FoS basis in one or more host Member State(s). In EIOPA's view, this highlights the need for NCAs to closely work together on timely cooperation and exchange of information.

- 1.75. In order to strengthen supervision of cross-border business, EIOPA will keep on monitoring the effective application of the Decision on the collaboration of the insurance supervisory authorities, in particular by encouraging the extension of the scope of the College of Supervisors to cover FoS and FoE material issues.
- 1.76. However, since College of Supervisors are not established when the cross-border activity is limited to FoS and FoE, the NCAs cannot benefit from an established binding supervisory tool where home and host supervisors can discuss issues and reach decisions. Hence, EIOPA's role could be strengthened by setting up specific tasks and powers to address the challenges faced regarding cross-border issues by creating and supporting the co-operation between home and host supervisors, including clearer powers to initiate the establishment of co-operation platforms. Moreover, it would be important for EIOPA to be informed at an early stage of cross-border developments that can be a source of potential issues and to play a co-ordination role to manage and efficiently conclude on-going cross-border issues among home and host supervisors, for instance in the situation of a fitness and propriety dispute, where challenges arise due to the lack of harmonization on the requirements and the assessments.
- 1.77. EIOPA is of the view that the information regarding cross-border business be enhanced in the Solvency II reporting package given its importance from a prudential perspective. The current requirements were designed to comply solely with Article 159 of the Solvency II Directive which is mainly addressing statistical needs and should be reviewed having in mind prudential needs of both home and host supervisors.

Methodology on Data Collection and Analysis of Cases

- 1.78. EIOPA used various sources of data to address this request: annual and quarterly reporting data for the year 2016 and 2017; EIOPA's Questions and Answers on Regulation; relevant public information available in EIOPA's website; EIOPA's observations through the activities carried out to discharge its mandates; discussions held with NCAs when developing the Supervisory Handbook on the topics that related to this information request.
- 1.79. In addition, EIOPA designed a dedicated online survey regarding the COM's request on Article 242(2) and FoS and FoE. The survey was consulted with relevant experts from the NCAs and the COM.
- 1.80. EIOPA also carried out some data analysis using the QRTs data available as noted

above. Such analysis were validated in the HUB.¹³ It is important to acknowledge that data quality issues are still present on the information submitted by solo or groups to their supervisors, and therefore, the data present in this report should be read taking into account such constraints.

- 1.81. EIOPA also contacted directly the NCAs to address any gaps and/or inaccuracies identified on the responses submitted by NCAs to the online survey. EIOPA made its best efforts interpreting the information supplied by NCAs and appreciates that a more detailed analysis will be required to reach definite conclusions in some areas.
- 1.82. It should also be noted that the information collated and presented in this report reflects the views of the NCAs as of the time when they were surveyed. EIOPA analyzed such information on a best effort basis. However, EIOPA has not validated if the supervisory practices explained by the NCAs are consistently applied by the NCAs across its supervised groups and/or cross-border undertakings. This report does not make nor intend making an assessment on the supervisory practices of the NCAs.
- 1.83. EIOPA's views are derived from the information noted above and from relevant EIOPA public information associated with a corresponding topic. The reader is advised to take into account all pertinent material cited and/or quoted in each of the sub-sections to have an informed view of the cases and issues presented in the report.
- 1.84. EIOPA also wishes to inform the reader that based on the discussions with the COM and NCAs, EIOPA at the invitation of the COM sought to outline the extent to which supervisory convergence tools may or may not be sufficient to address the challenges identified in this report.
- 1.85. EIOPA is not formulating policy advice in this information report. A policy advice or policy recommendation requires a more in-depth process, including an impact assessment. Such process would require much more consideration and an adequate "Call-for-Advice" or a "Call-for-Opinion" from the COM.

Appreciation

- 1.86. The preparation and delivery of this report would have not been possible without the support from all Member States and in particular the various experts from NCAs and EIOPA, as well as the COM who supported throughout the process.

Report Structure

- 1.87. The content of the report is presented into eleven sub-sections, each covering the areas requested by the COM. Each sub-section will include as a minimum: (i) the

¹³ The HUB is a common connection point for both NCAs and EIOPA to share information in a secured manner.

extract from the COM's Info request; (ii) EIOPA findings; (iii) Reflections¹⁴

- 1.88. When possible, common issues identified in the findings are collated under a sub-heading. The reason for this is to be able to differentiate among the vast amount of information, which was requested.
- 1.89. Annex VI lists the eleven sub-topics which the COM asked EIOPA to address. Other Annexes cover specific data supporting the analysis of the information presented in this report.
- 1.90. EIOPA acknowledges that the COM's request entails different elements which are at times difficult to interlink or to discuss under a single section. Therefore, EIOPA has included sub-titles, when possible, to guide the reader on particular issues. The cases presented were in most cases provided by the NCAs in response to EIOPA's survey.

Disclaimer

- 1.91. This document is prepared as an information report only to the Commission. The document is not to be distributed to other recipients without EIOPA's acknowledgement.
- 1.92. The document was discussed by EIOPA's Board of Supervisors.

¹⁴ EIOPA has used the word "Reflections" instead of Conclusions in this report. The type of report and level of detail associated with each sub-section may not permit having a conclusive view. The reflection boxes in each section draw attention to the reader concerning key issues. Nevertheless, the reader should be aware that the main body of the document also provides important issues for consideration. The reflections noted for each section are also included in the Executive Summary under the subheading "Summary of findings by each of the sections requested by the Commission".

1 EIOPA's involvement in promoting supervisory convergence in group supervision, and supervision of cross-border business activities (FoS/FoE)

- 1.93. Group Supervision and cross-border supervision is at the heart of EIOPA's mission and strategy. EIOPA's mission is to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system for the Union economy, its citizens and businesses.
- 1.94. This mission is pursued by promoting a sound regulatory framework and consistent supervisory practices in order to protect the rights of policyholders, pension scheme members and beneficiaries and contribute to the public confidence in the European Union's insurance and occupational pensions sectors.
- 1.95. EIOPA has supported supervisory convergence in group supervision by issuing Solvency II guidelines that are available to all stakeholders and addressing all questions on the application of the Solvency II framework. EIOPA has also led through the years the on-going development of a Supervisory Handbook, which strongly supports the understanding of group issues and facilitates sharing knowledge among supervisors. This is particularly visible through the discussions across Project Groups, Peer Reviews and EIOPA SRP training events. EIOPA has revised the General Protocol¹⁵, that builds on the Solvency II Directive provisions and on a lessons learned exercise conducted on cross-border problems laying down detailed requirements put on the home and host NCAs for exchange of information and co-operation. In addition, the recently adopted BoS Decision on cooperation between national competent authorities under the IDD ("the revised Luxembourg Protocol")¹⁶ will bring important changes in enhancing supervisory cooperation and exchange of information on conduct of business issues such as product oversight and governance processes. Supervisory convergence on group supervision is also reinforced by EIOPA's oversight team, which seeks to ensure consistency and quality in national authorities' supervision of insurance undertakings as well as to streamline the functioning of, the information exchange process, convergence and consistency across colleges.¹⁷
- 1.96. EIOPA has set up co-operation platforms in those cases where cross-border business could not be supported by colleges of supervisors but where enhancement FoS/FoE co-operation is needed due to serious cases such as e.g. lack of knowledge about local markets with implications over the sufficiency of

¹⁵ Decision on the collaboration of the insurance supervisory authorities EIOPA-BoS-17/04 of 30 January 2017

¹⁶ Decision of the Board of Supervisors on the cooperation of the competent authorities of the Member States of the European Economic Area with regard to Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution, EIOPA-BoS/18-340 of 28 September 2018

¹⁷ Specific initiatives taken by EIOPA in order to further supervisory convergence in the supervision of groups include:

- developing a supervisory handbook including the practice of group supervision,
- providing a uniform format for coordination arrangements in colleges (this being a document which sets out the functioning of a college) and coordinating their signing for all colleges,
- producing standard reports based on data reported at group and solo level, which can be shared among college members via the group supervisor,
- sharing best practices on group supervision on the EIOPA extranet,
- running annual training events for group supervisors, and
- carrying out Peer Reviews on relevant topics, for example on national supervisory authorities' governance of their participating in colleges of supervisors and on internal model pre-application processes.

technical provisions as a result of the risks being underwritten, lack of proper governance including outsourcing and partners, mis-selling, etc. A formal role of EIOPA setting up platforms would discourage forum shopping and business models aimed at escaping effective European supervision to the detriment of the host countries policyholders.

- 1.97. EIOPA has created cooperation forums called proto-college for supervisory authorities in different Member States which are not part of a classical group structure in the EU but owned by the same third country investor(s), and as such no college could be established. The first aim for the proto-college is to exchange information on e.g. the mapping of the group, the strategy of the third country investors, the risk profile of the group, and secondly to have a coordinated communication from the NCA's towards the investor supported by EIOPA. A formal co-ordinating role for EIOPA and an obligation for the NCA's involved to contribute to the proto-college would strengthen supervision and the protection of policyholders in the Member States concerned. A formal co-ordinating role for EIOPA would also strengthen its position towards the third country supervisor.
- 1.98. EIOPA is conscious that group supervision is an area where there is a growing interest among supervisors and where there is ample scope for further development. In particular, as groups in many jurisdictions continue to re-structure to adjust to new market demands, and also seek to expand their cross-border activities beyond the EEA.
- 1.99. EIOPA's experts provide on-going advice on group issues to national authorities as required. This is particularly visible through supervisory colleges, bilateral feedbacks to NCAs and group supervisors, dedicated platforms, proto-colleges, Supervisory Convergence project groups, Financial Stability groups; Q&As and others.

2 EIOPA's and other key info publicly available on the topics queried by the COM

- EIOPA-BoS-14/120 Opinion on Sound principles for Crisis Prevention, Management and Resolution preparedness of NCAs. (November 24 of 2014)
- EIOPA-BoS/17-148 Opinion To Institutions Of The European Union On The Harmonisation Of Recovery And Resolution Frameworks For (Re)Insurers Across The Member States (July 5 of 2017)
- EIOPA-CP-18-003 Discussion Paper on resolution funding and national insurance guarantee schemes (July 2018)
- EIOPA-BoS-14/181 EIOPA's Guidelines on group solvency (2014)
- EIOPA-BoS15/201 EIOPA's Opinion on the group solvency calculation in the context of equivalence (September 25 of 2015)
- EIOPA_BoS_16_008 Opinion on the application of a combination of methods to the group solvency calculation (January 27 of 2016)
- EIOPA 17-648 Report to the European Commission on the Application of Group Supervision under the Solvency II Directive (December 22 of 2017)
- EIOPA-BoS-17/014 BoS Decision on the collaboration of the insurance supervisory authorities (January 30 of 2017)
- EIOPA-BoS/18-340 BoS Decision on the cooperation of the competent authorities of the Member States of the European Economic Area with regard to Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (September 28 of 2018)
- Review of the European Supervisory Authorities (European Commission, Ref. Ares(2017)1546860 - 22/03/2017)

3 COM's Request by sections

General Comment

- 3.1. As a general information to the reader, EIOPA notes that many of the Commission's issues noted in its request relates to cross-border groups, whereas Solvency II also applies to "domestic" groups, that are groups where all undertakings are located in the same country and supervision is carried out by the relevant national supervisory authority. NCAs supervising only domestic groups are also addressed in EIOPA's survey, and, where applicable, their comments have been taken into account EIOPA also notes that some of the Commission requests also apply to solo supervision.

3.1 Early Intervention

3.1.1 COM's Info Request

COM's Info Request:

Article 218 (4) of Directive 2009/138/EC provides that Articles 136 and 138 (1) to (4) shall apply *mutatis mutandis* at group level. However, Directive 2009/138/EC does not explicitly define measures of early intervention at group level, in contrast to Directive 2014/59/EU on recovery and resolution of credit institutions and investment firms.

EIOPA is asked to provide, *inter alia*, information on the number of notifications of deteriorating financial conditions and communications on non-compliance of the group solvency capital requirement or of a risk of non-compliance with the group solvency capital requirement within the next three months, in compliance with Article 218 (4) of Directive 2009/138/EC, and the main supervisory measures taken.

In its Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for reinsurers across their Member States, EIOPA provided some data on powers of early interventions.

If new developments have occurred since July 2017, EIOPA is requested to provide updated information on:

- ☐ the number of Member States where national supervisory authorities have powers of early intervention at group level, the nature of such powers and the triggers to use them;
- ☐ the number of cases of early intervention on group level by national supervisory authorities since the entry into force of Directive 2009/138/EC, and the measures effectively taken in such cases;
- ☐ potential difficulties, if any, in applying early intervention measures to an insurance or reinsurance group which is also a financial conglomerate or which belongs to a financial conglomerate.

3.1.2 Findings

Group's non-compliance with Article 218(4) and (5) of the Solvency II Directive

- 3.2. The Solvency II regulation introduced two capital requirements, the solvency capital requirement (SCR) and the minimum capital requirement (MCR), which correspond to different levels of risk. These two requirements are calculated differently and trigger different supervisory actions.

- 3.3. The supervision of group solvency (Article 218 of the Solvency II

Directive) sets out in paragraphs (2) and (3) requirement for the insurance and reinsurance undertakings “to ensure that eligible own funds available in the group are always at least equal to the group Solvency Capital Requirement”.¹⁸

- 3.4. As soon as the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following three months, the group supervisor and all other involved supervisory authorities within the college of supervisors, shall analyse the situation of the group (Article 218 of Solvency II Directive paragraph 5).
- 3.5. According to the information provided by NCAs, since the entering into force of Solvency II Directive, there have been four notifications of deteriorating financial conditions (one of them reported as an actual breach of SCR) and communications on non-compliance of the group solvency capital requirement or of a risk of non-compliance with the group solvency capital requirement within the next three months . Please note that the graph below shows the number of respondents (NCAs), e.g. one NCA could have encountered more than one notification.

Did you receive any notifications of deteriorating financial conditions and communications on non-compliance of the group solvency capital requirement or of a risk of non-compliance with the group solvency capital requirement within the next three months?

	Answers	Ratio
Yes	3	10.7%
No	25	89.3%

- 3.6. Three of the Member States report that they have been notified for such cases and only one NCA asked the undertaking to submit a recovery plan. In the other two cases the notification about adverse developments was sent to the particular NCA from other EEA supervisory authorities. No intervention was considered in these two cases since the adverse developments reported did not prevent the local undertakings from meeting regulatory requirements. One case has been reported as an actual breach of SCR and the measure taken was that the Solvency II license of the undertaking was revoked (no recovery measures were needed).
- 3.7. The results of the survey show that for the two and a half years where the Solvency II framework has been implemented NCAs have indeed captured cases of group’s non-compliance with Article 218 (4) and (5). The majority of those cases (as noted in paragraph 3.5) were not affecting the companies’ ability to meet the regulatory requirements and therefore no effective measures were taken onboard from the supervisory authorities.

Deteriorating Solvency Position

- 3.8. Article 141 of the Solvency II Directive states that the supervisory authorities shall have the power to take all measures necessary to safeguard the interest of the policyholders where the solvency position of the undertaking continues to deteriorate.

¹⁸ As calculated in accordance with subsections 2,3,4 and 5 (Art. 218 (2) and (3) of 2009/138/EC)

- 3.9. Early intervention is the ability of the supervisor to bring change to undertaking's behavior in a formal dialogue with the entity/group, while undertaking's financial situation remains formally sound and compliant with the law.
- 3.10. In line with this, EIOPA's Opinion defines early intervention as a "stage where the solvency position of an insurer starts to deteriorate and where it is likely that it will continue to deteriorate and fall below the SCR if no remedial action is taken."¹⁹
- 3.11. Monitoring the compliance with the SCR is not a single direction activity performed only by the NCAs. Many undertakings and groups conduct their own self-assessment of what is a near breach of its SCR, and define internal triggers and buffers.
- 3.12. In case of breach of regulatory triggers, undertakings are required to report the event to NCAs according to Article 138(1) of the Solvency II Directive.

The powers of early intervention

- 3.13. In its Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for reinsurers across their Member States, EIOPA provided some insight on powers of early interventions. NCAs were asked also to report whether each power was available before or after the breach of the SCR.
- 3.14. An overview of the powers available to NCAs is provided in the Annex I.²⁰ The split of powers considered and the main conclusions of the Opinion's survey are summarised below:
- **Powers aimed at restoring capital adequacy.** Although sometimes with some restrictions, most of the powers are widely available across Member States, with the exception of the power to require the mandatory conversion of debt instruments. The results show that a majority of the NCAs can exercise the available powers before the breach of the SCR.
 - **Powers affecting management and governance.** The powers considered are available to a majority of the NCAs, except for the power to seek for a court's appointment of an administrator. This might be explained by the fact that a large number of NCAs are themselves empowered to directly appoint an administrator. On average more NCAs are able to use the powers affecting the management and governance of insurers before the breach of the SCR compared to the powers aimed at restoring capital adequacy
 - **Powers affecting the business and organisation.** A majority of the NCAs do not have the power to require the transfer of the financing operations to the parent company, or to require the sale of subsidiaries; these powers might be regarded as rather intrusive measures to be taken at an early stage. On the other

¹⁹ Paragraph 89 of EIOPA Opinion on recovery and resolution . Link: [https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_\(re\)insurers.pdf#search=EIOPA%2DBoS%2D17%2D148%5FOpinion%5Fn%5F%5Fand%5Fresolution%5Ffor%5F%28re%29insurers](https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_(re)insurers.pdf#search=EIOPA%2DBoS%2D17%2D148%5FOpinion%5Fn%5F%5Fand%5Fresolution%5Ffor%5F%28re%29insurers)

²⁰ It should be noted that some NCAs mentioned that some of the powers they have at their disposal are not explicitly laid down in Solvency II legislation.

hand, measures such as the power to require the insurer to limit intra-group transactions or to require a supervisory approval for the disposal of assets are available across Member States

- **Powers affecting the shareholders.** A majority of the NCAs can limit or restrict the payment of dividends to shareholders, even before the breach of the SCR. A smaller number of NCAs have the power to require shareholders to support an insurer in trouble, although the power is often not explicitly granted to NCAs.

3.15. In its Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for reinsurers across their Member States, EIOPA concludes the following:

- A harmonised recovery and resolution framework should introduce a common set of early intervention powers for NCAs which are compatible with the Solvency II framework.
- NCAs should be able to exercise these powers at a sufficiently early stage in order to avoid the escalation of problems at insurers.
- The introduction of early intervention powers should especially not result in a new pre-defined intervention level or capital requirement beyond what is envisaged in Solvency II.

Powers at group level for early intervention available to National Competent Authorities

3.16. EIOPA’s Opinion did not distinguish on the early intervention between group and solo level. This section here provides therefore a more in-depth overview, focusing specifically on Groups.

3.17. 43% of the Member States report that they have powers within the local legislation which allow them to intervene in case of a deterioration of the financial position at group level. From the 57% that answered not having early intervention powers at group level, 10% do not have any insurance group available within the jurisdiction to be applied to.

3.18. In this context, it should be noted that Article 218 of Solvency II Directive does not refer to Article 141 to apply *mutatis mutandis*, but only to Article 136 and Article 138. This could be the origin of such different realities between Member States. The figure below shows the number of respondents to the question:

Do you have powers in national legislation, referring explicitly to early intervention at group level?

	Answers	Ratio
Yes	12	42.9%
No	16	57.1%

3.19. One of the NCAs highlights that although there are no explicit provisions in its local legislation referring to early intervention at group level, the supervisor “has broad statutory powers sufficient to intervene where action is necessary at the level of an insurance undertaking or the group in order to achieve the objectives of Solvency II”. In fact, the NCA has the power to impose requirements on an insurance undertaking, including the case when it is the head of the group (valid as well when the parent is a holding company), where this is necessary

to advance any of the authorities objectives.

Triggers for early intervention at group level defined by NCAs

- 3.20. In order to be able to act, the NCAs empowered for early intervention usually set up a framework, which describes the factors (triggers) to be considered when assessing whether a situation of near non-compliance of SCR occurs. As a consequence, they can apply early intervention measures.
- 3.21. Developing an operational framework is the first step of a process including a stage for identifying triggers defined by NSA or by undertakings/groups, followed by conducting further supervisory assessment and taking the supervisory actions needed.
- 3.22. According to the Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for (re)insurers across the Member States “the introduction of early intervention powers should, however, not result in a new pre-defined intervention level”. The Opinion advises that these powers should not bring “an implicit new capital requirement” and, consequently, “hard, quantitative criteria for the use of early intervention powers should therefore be avoided” by NCAs.
- 3.23. The supervisory ladder is usually assessed individually taking into account as well the circumstances and the supervisory judgement regarding the (re)insurance group. Different approaches to triggers definition are reported among NCAs, which could be classified into three main categories – pure quantitative, pure qualitative and combined triggers.
- 3.24. Almost one third of the authorities use both a quantitative and qualitative approach to define a need for early intervention. In two of the jurisdictions pure quantitative triggers are used, while another two rely on pure qualitative triggers. The rest of the Member States, nearly 60% of the NCAs asked, do not have any triggers developed in relation to early intervention powers because they do not have them embedded in the local legislation or they do not supervise (re)insurance groups.

What is the nature of the triggers for your early intervention powers?

	Answers	Ratio
quantitative	2	7.1%
qualitative	2	7.1%
both	8	28.6%
No Answer	16	57.2%

- 3.25. All Member States that have early intervention powers available have developed an operational framework to use them, including triggers developed. This shows that supervisors are acting where there is a power and a need for early intervention action by following similar approach – setting up in most of the cases combined triggers for assessing undertakings/ groups SCR.
- 3.26. Examples of triggers used across Member States are:
- near breach of own funds requirements;
 - perceived lack of sufficiency of technical provisions;

- perceived lack of sufficient liquidity;
- quantitative outcome of the Risk Assessment Framework²¹ used by the supervisor;
- assessment of the adequacy of the excess of Own Funds compared to the group SCR, taking also into account how the Own Funds changes under the various stress scenarios of the main risk factors (taken from ORSA or on ad hoc basis, in particular in case of preliminary assessment of M&A operations of the group).
- delays in providing Solvency II reporting package or any other national specific reporting;
- departure of key people from the undertaking;
- own funds quality;
- adequacy of the group governance and possible request of capital add on
- no sufficient quality of the governance system within the undertaking/ group;
- compromised interest of the insurance group's clients, policyholders or beneficiaries;
- no ability of the supervised entity/group to comply with the stress tests periodically run from the NCA.

3.27. The results from the survey issued to NCAs show that the majority of the supervisors prefer to use triggers based on both quantitative and qualitative assessment.

3.28. Based on the responses received, even if there is only a case of early intervention at group level reported across the EU since the Solvency II Directive entered into force the the supervisor acted in accordance with the powers available and required the undertaking "to cease writing any new business".

Difficulties in applying early intervention at group level reported by NCAs

3.29. There are two Member States which reported difficulties for NSAs in applying early intervention powers/measures to an (re) insurance group which is also a financial conglomerate or belongs to a financial conglomerate.

3.30. One of the main obstacles for applying these powers are related to the enforceability of measures taken by the co-ordinator of the insurance led financial conglomerate. In case the exposed to risk group solvency position stems from solvency position of entities belonging to other financial sector it is reported as challenging to enforce any measures at group level.

3.31. Co-ordinating different supervisors (e.g. different countries, different sectors) with different level of information about the conglomerate's status quo is seen as well as one of the key difficulties to apply early intervention powers at group level.

²¹ The risk classification combined with the impact classification determines the supervisory rating in the context of the Risk Assessment Framework (RAF). See Guideline 19 (Determination of outcome of the risk assessment framework) of the EIOPA Guidelines on supervisory review process.

- 3.32. Member States find as well that the materiality of deteriorations observed is difficult to prove in many cases and this prevents NCAs to take any early intervention measures at group level.

Reflections 3.1 – Early Intervention

- 3.33. EIOPA acknowledges the limitations in early intervention powers and measures available and used in each jurisdiction. More than half of the Member States reported that they have no explicit powers additional to the Solvency II framework within local legislation regarding intervention in case of deterioration of financial position at Group level.
- 3.34. Additionally the majority of the Member States report they do not use any triggers for early intervention while the other apply different approaches (see graph under paragraph 3.24). EIOPA notes, in line with the Opinion²², there is a need for a common set of early intervention powers for NSAs, which would allow them to intervene in a similar way at a sufficient early stage to avoid the escalation of problems both at solo and group level, i.e. potential non-compliance with the SCR.
- 3.35. A harmonised recovery and resolution framework should introduce a common set of early intervention powers for NSAs which are compatible with the Solvency II framework. The lack of such harmonised minimum set of powers creates difficult situations in particular when addressing cross-border groups and cross-border supervision in general.
- 3.36. The introduction of early intervention powers should especially not result in a new pre-defined intervention level or capital requirement beyond what is envisaged in Solvency II.
- 3.37. A clarification of the application of Article 141 of the Solvency II Directive²³ at group level could be considered together with the common set of early intervention powers for NSAs which are compatible with the Solvency II framework (see paragraph 3.18).

²² [https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_\(re\)insurers.pdf#search=EIOPA%2DBoS%2D17%2D148%5FOpinion%5Fon%5F%5Fand%5Fresolution%5Ffor%5F%28re%29insurers](https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_(re)insurers.pdf#search=EIOPA%2DBoS%2D17%2D148%5FOpinion%5Fon%5F%5Fand%5Fresolution%5Ffor%5F%28re%29insurers)

²³ Article 141 of the Solvency II Directive refers to Supervisory powers in deteriorating financial conditions

3.2 Practices in Centralised Group Risk Management and functioning of group internal models including stress testing

3.2.1 COM's Request

COM's Info Request

EIOPA is asked to provide, *inter alia*, information on:

- 3.2.1 the number of cases where the regime of centralised risk management is applied, the total number of applications in accordance with Article 237 of Directive 2009/138/EC, a description of practices in centralised group risk management and their impact on the capital allocation within the group;
- 3.2.2 any obstacle or challenges related to the use of the regime of centralised group risk management;
- 3.2.3 cases where group internal models differ from the ones applied at solo level, including an assessment of the impact of such divergences;
- 3.2.4 the number of cases where Article 231 (7) of Directive 2009/138/EC was applied, and an analysis of such cases;
- 3.2.5 the number of cases where Article 233 (5) of Directive 2009/138/EC was applied, and an analysis of whether all risks existing at group level are properly covered in such cases;
- 3.2.6 supervisory practices to include in the group solvency calculation, undertakings outside the scope of group internal models, including an assessment of the impact of potentially divergent approaches.

3.2.2 Findings on Practices in Centralised Group Risk Management (CRM)

- 3.38. Based on the information shared by the relevant NCAs within the college of supervisors and the responses from the NCAs to the online survey on the COM's request, EIOPA is not aware of any cases of centralised group risk management agreements reached under Article 237 of the Solvency II Directive.
- 3.39. Since there are no cases of groups benefiting from the centralised group risk management regime, the impact on the capital allocation of the group cannot be estimated. However, there is no indication that the capital allocation within the group could be affected. The capital requirements of each solo undertaking within the group are unaltered due to CRM and such requirements are the ones that drive the group capital requirements.
- 3.40. It is also EIOPA's view that a group that applies for CRM regime may not see substantial differences from the general approach to group supervision, as all requirements need to be observed by the group (subject to the derogations/exemptions granted in the CRM framework). In addition, EIOPA believes that groups under CRM would require a more efficiently coordinated co-operation among all relevant supervisory authorities involved than for other groups.

Challenges with CRM

- 3.41. One of the doubts raised was whether CRM applies only to cross-border groups. The application of CRM seems to presume that most groups will have a supervisory college, which is not the case for EU domestic groups. However, as the Solvency II Directive does not explicitly prohibit application of CRM for domestic groups, there may be Member States where this is allowed although the responses to the online survey do not capture this possibility.
- 3.42. A potential challenge regarding CRM could also be derived from the Application of Article 243 of the Solvency II Directive as clarity may be required on how CRM can effectively be applied for subsidiaries of a IHC and MFHC. Please refer to supervisory challenges regarding IHC and MFHC in sections 3.9 and 3.10 of this report.
- 3.43. Another perceived challenge is that under CRM, the application of subgroup supervision at the level of the ultimate parent undertaking at national level, which is covered by CRM, is not possible anymore.
- 3.44. From additional discussions with national experts other concerns were identified. If groups have a centralised group risk management some governance issues may arise. A centralised group risk management could lead at times to conflict of interest and decision making issues between the group and the solo undertakings (and vice versa) as well as affecting the capacity of the group and the solo undertakings (and vice versa) to react to specific risk issues and make timely decisions.
- 3.45. Having a CRM would also require the availability of resources and increased communication between the solo undertaking and the provider of the risk management function. The undertaking has to adopt the business and risk strategy and the CRM must support the undertaking from the point of view of the solo and not the group. If the CRM has to support many undertakings within the group, it must have available resources in order to fulfil all the delegated tasks from every undertaking as well as for the group.
- 3.46. Additional challenges stemming from national commercial law as well as the requirements for listed companies were identified by at least one NCA with regard to application of CRM. Specifically, in the case of minority interest holders are entitled to the same level of information especially when the company is listed. Additionally, the governance policy (and strategy) of the ultimate insurance company may limit the possibility of an optimal management at local level, which is in contradiction with the national commercial law.
- 3.47. It is the general understanding that groups have not applied for the CRM regime as the industry might not see clear benefits from its application (e.g. all groups independently from having a centralised or decentralised structure should have a sound and prudent risk management framework).
- 3.48. It is also perceived that the authorisation process for the CRM regime could be burdensome and does not necessarily facilitate

efficient group capital management. It should also be noted that currently the arrangements on CRM, i.e. risk-management processes and internal control mechanisms of the parent undertaking covering the subsidiary and the parent undertaking, fall under the scope of outsourcing and therefore have to comply with all outsourcing requirements set out in the Solvency II regulation.

- 3.49. It is noted that the CRM regime was introduced to promote a more efficient and coordinated co-operation among all relevant supervisory authorities involved that would allow a future assessment of introducing a new regime that would bring capital relief to groups based on diversification effects. Such a regime would require a very efficient and centralised group supervision to guarantee the protection of all policyholders of such a group. Without discussing the merits or the problems of a group support regime as it is referred to in COM(2008)0119 and in the report of the Committee on Economic and Monetary Affairs of the European Parliament of 16 October 2008 (A6-0413/2008) such efficiency at the level of colleges of supervisors was not achieved yet.
- 3.50. EIOPA believes that the CRM regime will continue to be unused unless clear benefits to the groups are defined. It is not adequate to promote a discussion of a group support regime as it is referred to in COM(2008)0119 and in the report of the Committee on Economic and Monetary Affairs of the European Parliament of 16 October 2008 (A6-0413/2008) at this moment. It is also not clear whether such a regime should be discussed in the near future either, if taking into account that the responsibility remains on the solo supervisors. An additional factor for the successful supervision of CRM groups is the strong dependency on the effectiveness of supervisory colleges in agreeing on certain decisions for a subsidiary covered by CRM that otherwise would have been decided solely by the solo supervisor (e.g. capital add-ons and use of undertaking specific parameters).
- 3.51. In case any legislator foresees the possibility of discussing the Group Support Regime (GSR) or similar regime in the future, then there will be a need to consider the elements currently preventing the application of CRM.

3.2.3 Findings on Functioning of Group Internal Models including Stress Testing

- 3.52. The Solvency II Directive offers the necessary measures and flexibility required for supervision of internal models for groups. It allows NCAs to effectively assess, authorise and monitor the appropriateness of internal models.
- 3.53. Regarding EIOPA's role, starting in 2013, staff in EIOPA's Centre of Expertise in Internal Models (CoEIM) attended selected on-site inspections of cross-border groups' internal models and worked with members to improve consistency in how the models were assessed in the pre-application and formal application phases. Given the current supervisory framework, EIOPA focuses on a risk-based approach to attend selected on-site inspections and specialist college meetings for cross-border group internal models. The resources are also invested in other areas of the internal model team such as comparative studies. Following the risk based approach, there are already two on-going comparative studies on Market & Credit risk and Non-life underwriting risk. But, these did not cover the remaining risk categories and model aspects such as life underwriting risk, operational risk and diversification.
- 3.54. Given the current supervisory framework, EIOPA's role is not to assess the application of group internal models and to directly engage with undertakings. In accordance with Article 347 (3) of the Delegated Regulation, EIOPA is not considered as a "concerned supervisor" in the joint decisions about internal models in colleges. In the past EIOPA has in general not received the formal application materials (e.g. Internal Model (IM) documentation) or other materials (e.g. the exchange of supervisors' views). In order for EIOPA to have access to all relevant information, solutions were found on a case-by-case basis. For example, where EIOPA was invited in college meetings or on-site inspection, presentations and draft versions of decisions have usually been available as part of the papers provided before or during the meeting. Note that the outcome of the current Proposal for a regulation – Review of the ESAs²⁴ might change this situation.
- 3.55. There are divergent practices with regard to some aspects of the internal models that could have a relevance at group level in a cross-border context or with regard to the differences between the solo and group internal model. For example, currently, some Member States allow the use of dynamic VA whereas others prohibit it. This will also be subject to the review of the implementation of the EIOPA opinion on the dynamic VA. As an additional example, some internal models cover sovereign credit risk, or model it to a lower extent, others do not model it at all. The factual situation is monitored by the comparative studies on market and credit risk.

²⁴ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-1546860_en

- 3.56. Furthermore, EIOPA notes that internal model reporting is tailored to the specific models and current needs of the NCAs concerned with the supervision of these models. Consequently, the reporting requirements imposed by NCAs to internal model users vary, with respect to quantitative reporting, including standard formula results, as well as e.g. reports on model parameters and changes to them. As laid out in the supervisory convergence plan 2018-2019, EIOPA assesses whether and how quantitative reporting requirements can be improved so as to lay the foundation for future internal model ongoing appropriateness indicators. In this context, EIOPA is also assessing, whether for supervisory purposes it is sufficient to be in a position to receive standard formula figures only via a reasoned request and for major model changes.
- 3.57. On-going work in the area of internal models as mentioned above is carried out, as noted on EIOPA's supervisory convergence plan, also including supervisory practices on setting up a supervisory plan for internal models. It is supported by discussions in the dedicated expert network.
- 3.58. Since the last report issued by EIOPA to the Commission on the application of group supervision under the Solvency II Directive, EIOPA has no material information to report on the findings already identified on the areas previously queried on internal models.
- 3.59. As regards to the specific questions the Commission had for this information report, EIOPA has observed the following:

Cases where group internal models differ from the ones applied at solo level, including an assessment of the impact of such divergences

- 3.60. EIOPA has been asked to provide information on how many groups are using an internal model that differs from any of the ones applied at solo level. As a "different internal model" EIOPA and NCAs understood an IM approved by a separate decision.
- 3.61. Based on this, only one NCA replied that there is one case where a sub-group has a different internal model to the group internal model. The internal model for this sub-group is approved according to article 308b (16) of the Solvency II Directive. The reason for the different internal model is the significantly different risk profile of that sub-group from the rest of the group. The undertaking heading this sub-group is located in the same Member State as the ultimate parent undertaking. Concretely, it is a large re-insurance group, while the rest of the group essentially writes primary insurance business. Group and sub-group data is fully consolidated based on distribution data from the sub-group model using transformation algorithms where necessary.
- 3.62. It should be noted that some groups "de-scoped" from their internal models certain undertakings belonging to a different jurisdiction. This took place early in the pre-application phases and partly also in the context of then divergent supervisory views. This has temporarily put aside some of the inconsistency issues observed at European level.

- 3.63. EIOPA did not collect information from NCAs that is more detailed for the purposes of the scope of this report. Example of different treatments can include, but are not limited to:
- use of a different risk coverage compared to the group (e.g. the local IM does not cover sovereign risk)
 - different parametrization and/or specific amendments to the internal model to calculate the solo SCR, compared to the group internal model to calculate the contribution of the undertaking to the group SCR, in order to capture local market specificities,
 - impact of different national rules compared to the group head's country (e.g. case where one Member State would allow the use of dynamic Volatility Adjustment²⁵ whereas another Member State would not)

Capital Add-Ons

- 3.64. One capital add-on set at group level relates to an internal model that did not cover all the material risk profile deviations. One capital add-on, set at solo level, relates to a case where the supervisory authority considered that the risk profile of the ultimate parent undertaking at national level deviates significantly from the internal model approved at group level.

Supervisory practices in the group solvency calculation: methodologies used to include in the calculation of group SCR undertakings that are outside of the scope of the group internal model

- 3.65. In addition to the default method stated in Article 239(1) of the Delegated Regulation, Annex XVIII of the Delegated Regulation states the methodologies available to integrate standard formula results to the partial internal model results. Groups could use these methods to include in the calculation of the group SCR undertakings that are outside of the scope of the group internal model (IM). The following table gives an overview of the usage of these techniques.

²⁵ https://eiopa.europa.eu/Publications/Opinions/2017-12-20%20EIOPA-BoS-17-366_Internal_model_DVA_Opinion.pdf

Method	Method 1	Combination of Method 1 and Method 2	Method 2 (integration techniques do not apply)
Integration technique			
1 – two world approach ²⁶	11 (including 2 sub-group)	0	2
2 – extended Standard Formula (SF) Aggregation	3	1	
3 – extended Partial Internal Model (PIM) Aggregation	3 (including 1 sub-group)	3	
4 – hybrid aggregation with SF correlations	2	1	
5 – hybrid aggregation with averaged correlations	1	0	
Other	1	1	
Total number of groups	21 (including 3 sub-groups)	6	2

3.66. The choice of the concrete integration technique is usually in the first place driven by the fit to the internal model, the risk management purpose and finally the risk profile. But also feasibility, complexity and effort for operation are taken account for. Some NCAs highlighted the following as examples and/or challenges:

- a. Integration technique 1 is simple to operate, but is typically only used where the risks outside the scope of the internal model are immaterial and therefore the potential diversification benefit between the modelled and non-modelled risks is small. If the entities out of scope of the group internal model are good “diversifiers”, the technique is considered too prudent. The use of the integration technique 1 could provide similar outcome for the group SCR calculation as if using method 2 (adding)²⁷. It is noted that using method 2 (to calculate the group SCR) is subject to a separate approval process.
- b. Integration technique 2 is complex, but offers greater flexibility than the other techniques in specifying the dependency structure between modelled and non-modelled risks. It is also able to cope with a wide range of situations. In one example, the aggregation

²⁶ Addition of non-modelled and modelled SCRs

²⁷ Except in the specific case of an equivalent third country, where the capital requirement under method 2 could reflect the local capital requirement whereas the Solvency II principles apply when using the integration technique

follows standard approaches and only non-life underwriting risk is covered by the PIM, focusing on the specific risk profile. This technique is not deemed appropriate when the internal model does not replicate the standard formula structure as the technique aggregates risk modules from the standard formula structure (especially when the mapping between IM and SF structures show some overlap between modules, which means that a prerequisite of the technique is not satisfied).

- c. Integration technique 3 is simple to operate and is able to cope with a wide range of situations.
 - d. Integration technique 4 and 5 are relatively complicated and have a narrower application than other techniques. They are not able to cope with models where the scope is limited to one or more material business units. Both integration technique 4 and 5 require a mapping of the risk factors (at a granular level) between the internal model (IM) and standard formula (SF). Therefore, these techniques are not deemed appropriate when the risk granularity structures differ too much.
 - e. It is noted that integration techniques were initially designed with the intention of integrating risks and not companies. Therefore, the application of them for the purpose of integrating a company into the group in the group solvency calculation may be challenging. In particular, some dependencies between undertakings may not be reflected. Other challenges may come from the interaction with the choice of the method to be used for the calculation of group solvency.
- 3.67. Where a group wishes to use one of the integration techniques, NCAs expect the group to demonstrate that its chosen technique is the most appropriate of those set out in Annex XVIII. In one example, the group is using a combination of methods with method 2 applied to third country undertakings and adding SCRs for SF-entities with some diversification taken into account via factors derived by internal model calculations. The group internal model is full with respect to risks but partial with respect to coverage of entities. The modelling in the group model and the use of solo internal models is fully aligned. In another example, SF correlations and specific correlations that are properly justified are being used. Where the group has separate business, the use of specific integration techniques is more efficient from a risk management perspective.
- 3.68. Based on the responses provided by NCAs, there were 12 cases where groups using an internal model included into the model scope, at group level, undertakings using Standard Formula for solo SCR calculation.
- 3.69. For six groups the choice of the methodology is not significant since the size of the undertaking's portfolio compared to the group is very small. In these cases, the effects are not material.

- 3.70. Based only on the information available in the QRTs, there are 65 undertakings that use an internal model (18 solos from 6 countries and 4 groups from 4 countries) that have submitted extra SF calculations requested by the NCA via the templates used for standard formula users. Other NCAs may have requested this information through bilateral communication with the undertakings but EIOPA does not have any statistics on how many do so.
- 3.71. Impact from a qualitative point of view: Groups include internal model figures in the overall steering metrics as additional information where appropriate to achieve consistency. Integration in group calculation is done to better reflect the group's capital position. The decision for which integration technique will be applied in general belongs to undertakings.
- 3.72. There could be consequences in terms of risk measure, risk monitoring and risk management (and therefore in terms of strategy) with regards to the entities that use the SF but are included in the scope of the group internal model. In some cases, these entities would have to process calculation in both standards: SF for the local regulator and IM for the group. In terms of risk management, the local entities would monitor both. While the group would be mostly interested in the IM figures (and monitors its risk strategy mostly, if not only, with IM figures), the group also should be careful of the SF reported numbers (for example in terms of risk and capital allocation, dividend remittances, and any other decision impacting solvency numbers). NCAs should therefore make sure that both calculations are considered and monitored at group level too (i.e. the regulatory calculation with the full scope of the group IM, and another calculation where the local constraint is taken into account).

3.2.4 Reflections on CRM; and Internal Models

Practices on Centralised Risk Management (CRM)

- 3.73. Based on the information shared by the relevant national competent authorities within the college of supervisors and the responses from the NCAs to the online survey on the COM's request, EIOPA is not aware of any cases of centralised group risk management agreements reached under Article 237 of the Solvency II Directive.
- 3.74. Key challenges related to the use of the regime of CRM are provided in the main body of the document (see paragraphs 3.41 to 3.49). EIOPA believes that the CRM regime will continue to be unused unless clear benefits to the groups are defined. It is not adequate to promote a discussion of a group support regime as it is referred to in COM(2008)0119 and in the report of the Committee on Economic and Monetary Affairs of the European Parliament on this proposal of 16 October 2008 (A6-0413/2008) at this moment. It is also not clear whether such a regime should be discussed in a near future either, if taking into account that the responsibility remains on the solo supervisors. An additional factor for the successful supervision of CRM groups is the strong dependency on the effectiveness of supervisory colleges in agreeing on certain

decisions for a subsidiary covered by CRM that otherwise would have been decided solely by the solo supervisor (e.g. capital add-ons and use of undertaking specific parameters).

Functioning of group internal models including stress testing

- 3.75. There are 37 internal models at group level, 28 of these use method 1 (consolidation method), 9 use combination of methods. NCAs do not report specific issues on group internal models and in general NCAs are satisfied with the means available. Further insights on the specific questions posed by the COM are found in the main body of the document. NCAs indicate in their responses to the survey that the Solvency II Directive offers them necessary measures and flexibility required for supervision of internal models for groups. It allows NCAs to effectively assess, authorise and monitor the appropriateness of internal models.
- 3.76. It is noted that integration techniques were initially designed with the intention of integrating risks and not companies. Therefore, the application of them for the purpose of integration a company into the group in group solvency calculation may be challenging. In particular, some dependencies between undertakings may not be reflected. Other challenges may come from the interaction with the choice of the method to be used for the calculation of group solvency.
- 3.77. There are divergent practices with regard to some aspects of the internal models that could have a relevance at group level in a cross border context or with regard to the differences between the solo and group internal model. For example, currently, some member states allow the use of dynamic VA whereas others prohibit it. This will also be subject to the review of the implementation of the EIOPA opinion on the dynamic VA. As an additional example, some internal models cover sovereign credit risk, or model it to a lower extent, others do not model it. The factual situation is monitored by the comparative studies on market and credit risk.
- 3.78. Furthermore, EIOPA notes that internal model reporting is tailored to the specific models and current needs of the NCAs concerned with the supervision of these models. Consequently, the reporting requirements imposed by NCAs to internal model users vary, with respect to quantitative reporting, including standard formula results, as well as e.g. reports on model parameters and changes to them. As laid out in the supervisory convergence plan 2018-2019, EIOPA assesses whether and how quantitative reporting requirements can be improved so as to lay the foundation for future internal model ongoing appropriateness indicators. In this context, EIOPA is also assessing, whether for supervisory purposes it is sufficient to be in the position to receive standard formula figures only by a reasoned request and for major model changes.
- 3.79. Regarding EIOPA's activities on internal models we especially refer to the current supervisory convergence plan as well as the planning documents. Furthermore, the role of EIOPA is considered in the context of the ESAs review

3.3 Intra-group transactions and risk concentrations

3.3.1 COM's Request

COM's Info Request

EIOPA in this section is asked to provide, *inter alia*, information on:

- 3.3.1 the scope of intra-group transactions which are reported by insurance and reinsurance groups;
- 3.3.2 any gap which may have been identified by national supervisory authorities in the definition of intra-group transactions as provided in Article 13 (19) of Directive 2009/138/EC and the transactions reported by the undertakings?;
- 3.3.3 the nature and volume of the main intra-group transactions and risk concentrations reported by insurance and reinsurance groups;
- 3.3.4 the number of cases of application of Article 213 (3) of Directive 2009/138/EC and the impact and challenges of the application of such provisions on the supervision of intra-group transactions within an insurance group;
- 3.3.5 potential divergent practices of supervision of intra-group transactions and risk concentrations, and their impact;
- 3.3.6 the number of cases where group supervisors applied enforcement measures in accordance with Article 258 (1) of Directive 2009/138/EC, and the triggers and content of such measures.

3.3.2 Findings on Intra-group Transactions (IGTs) and Risk Concentrations (RCs)

Scope of IGTs, which are reported by insurance and reinsurance groups

- 3.80. According to Articles 20 and 33 of the Commission Implementing Regulation (EU) 2015/2450, both individual (re)insurance undertakings (the parent undertaking of which is a mixed-activity insurance holding company) and (re)insurance groups report intra-group transactions. For the purpose of this report, as requested by the Commission, EIOPA considered only figures reported by (re)insurance groups. Data included in the report follows from the annual 2017 reporting of the templates S.36.01.01, S.36.02.01, S.36.03.01 and S.36.04.01. The data was verified by NCAs and material differences were corrected.
- 3.81. 269 (re)insurance groups (of the 363 groups that submitted an annual 2017 QRT) have reported intra-group transactions. These transactions are the transactions above the threshold determined by the group supervisor in accordance with Article 242(2) of the Solvency II Directive.
- 3.82. For the purpose of reporting the following types of intra-group transactions were defined:
 - Equity-type transactions, debt or asset transfers, such as:
 - equity and other capital items including participations in related entities and transfer shares of related entities of the group;
 - debt including bonds, loans, collateralised debt, and other

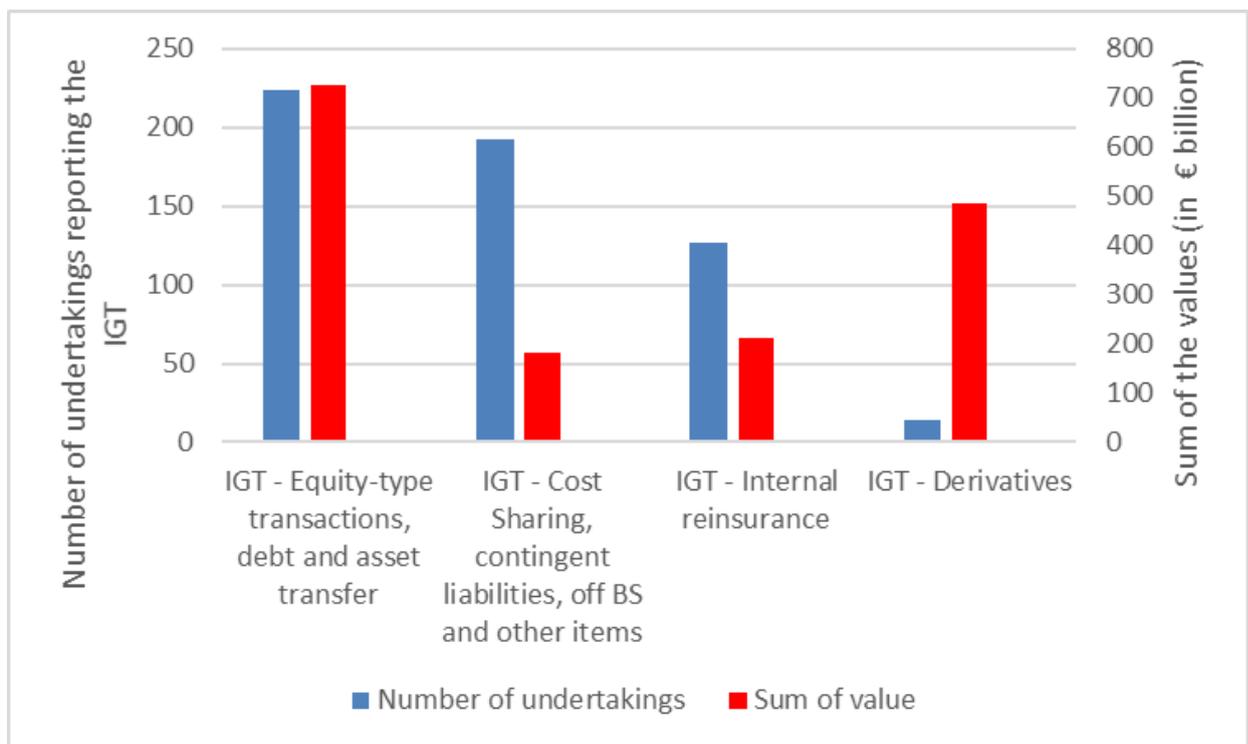
- transactions of similar nature e.g. with periodic pre-determined interest or coupons or premium payments for a pre-determined period of time;
 - other asset transfers such as the transfer of properties and transfer of shares of other companies unrelated (i.e. outside) to the group.
- Derivative transactions
- Internal reinsurance, such as:
 - Treaty reinsurance between related undertakings;
 - Facultative reinsurance between related undertakings; and
 - any other transaction that results in transferring underwriting risk (insurance risk) between related undertakings.
- other items, such as:
 - internal cost sharing;
 - contingent liabilities (other than derivatives);
 - off-balance sheet guarantees;
 - any other transactions between related undertakings or natural persons in scope of the group supervision.

3.83. The relative importance of IGTs can be assessed both by number and by value. However, different types of amounts are used in the reporting templates to describe value, i.e. market value or notional value. Therefore, the different intra-group transaction types cannot be compared with each other in monetary terms. In addition, care should be taken since intra-group transactions below the thresholds, defined by the group supervisor after consulting the other supervisory authorities concerned, are not included in the below results.

3.84. More than 80 percent of the 269 (re)insurance groups reporting intra-group transaction have intra-group equity-type transaction or debt and asset transfers (see Figure 1 below). On the other hand, only five percent of the groups reported derivative intra-group transactions, which is low considering that around 20 percent of the total number of intra-group transactions are derivative transactions. Hence, it shows that derivative transactions are concentrated around a few (re)insurance groups reporting the majority of transactions.

Figure 1: Number of (re)insurance groups that reported at least one intra-group transaction and sum of contractual amount at reporting date (equity), sum of value of transactions /collaterals or guarantees at reporting date (costs), sum of values of internal reinsurance recoverables (internal reinsurance) and sum of notional amount at reporting date (derivatives).²⁸

²⁸ Please remark that the quantitative values cannot be compared (see also paragraph 3.87)



Equity type transactions or debt and asset transfers

- 3.85. The balance of the contractual amount at reporting date (outstanding amount) of the equity type transactions or debt and asset transfers was €726 billion (31 December 2017). This is 8 percent of the total assets reported by (re)insurance groups at the end of 2017.
- 3.86. The sum of the contractual amount of the transaction / price was minus €1,012 billion.
- 3.87. The sum of the amount of redemptions/ prepayments/ paybacks paid during reporting period was €136 billion.
- 3.88. The sum of the amount of dividends, coupons, interest or other payments paid during the reporting period was €101 billion.

Derivative transactions

- 3.89. The notional amount at reporting date of the derivative transactions was €486 billion (31 December 2017). This is 10 percent of the total amount of derivatives and 5 percent of the total assets reported by (re)insurance groups at the end of 2017.
- 3.90. The notional amount at the transaction date was €1,042 billion. Differences between the notional amount at reporting date and at transaction date occur due to the selling or closing of positions during the reporting year.

Internal reinsurance²⁹

- 3.91. The internal reinsurance results for the reinsured entity was €5.8 billion at the end of 2017.

²⁹ The values reported in internal reinsurance are the sum of the reported transactions.

- 3.92. The net receivables at the end of 2017 were minus €4.8 billion.
- 3.93. The sum of the total internal reinsurance recoverables amount to €212 billion at the end of 2017. This is 100 percent of the total insurance recoverables reported by (re)insurance groups at the end of 2017.

Transactions /collaterals or guarantees

- 3.94. The sum of the value of transactions /collaterals or guarantees is €181 billion. This is less than 2 percent of the total assets reported by (re)insurance groups at the end of 2017.
- 3.95. The maximum possible value of contingent liabilities not included in the Solvency II balance sheet is €4.2 billion.
- 3.96. The sum of the maximum value of letters of credit/guarantees is €97 billion.
- 3.97. Finally, the sum of the values of guaranteed assets is €34 billion.
- 3.98. For more information on intra-group transactions, please refer to Annex II.

Gaps which have been identified by national supervisory authorities in the definition of IGTs as provided in Article 13 (19) of the Solvency II Directive

- 3.99. EIOPA is aware of the following gaps in the definition of IGTs as provided in Art 13 (19) of the Solvency II Directive:
- The definition as provided in Art 13 (19) of the Solvency II Directive does not explicitly include the reference to Insurance Holding company (IHC) or Mixed Financial Holding company (MFHC) as one of the possible counterparty of the IGT, while for the purpose of the group supervision the IHC and MFHC are assimilated to the insurance undertaking. This has a direct impact on reporting of IGTs as only IGTs in which at least one insurance or reinsurance undertaking is either involved directly or indirectly, are subject to reporting obligations under Article 245 of the Solvency II Directive. IGTs between an IHC, Mixed-activity insurance holding company (MAIHC) or MFHC are important for the group supervision and for the proper group solvency calculation and supervision of IGTs.

The issue was also raised via EIOPA's Q&A process tool – question 490.³⁰ It should be noted that information about the

³⁰ Intra-group transactions (IGTs) to be reported regularly in S.36.01, S.36.02, S.36.04, in accordance with Article 245 of the Solvency II Directive, should be those as defined in Article 13 point 19 of Directive 2009/138/EC, according to which IGT means "a transaction by which (re) insurance undertaking relies, either directly or indirectly on other undertakings..." and that are performed by insurance and reinsurance undertakings within a group. Therefore, only IGTs in which at least one insurance or reinsurance undertaking is involved, either directly or indirectly, are subject of reporting obligations under Article 245 of the Solvency II Directive.

transactions which do not fall under the scope of the above mentioned definition may be systematically requested in addition by the relevant supervisory authority on the basis of Article 254 of the Solvency II Directive, according to which supervisory authorities shall have access to any information relevant for the purpose of group supervision, regardless of the nature of the undertaking concerned. However, the current definition might affect supervisory convergence stemming from the divergent supervisory practices observed in closing the gap identified.

- Transactions between ancillary service undertakings and other financial sectors entities are not included in the scope of the definition of Article 13 (19) when there is an indirect involvement of an insurance undertaking.
- The scope for reporting on natural persons in the sense of related parties is considered to be not totally clear leaving room for different interpretation on where it does end, e.g. at Board Members, Supervisory Board Members, and/or also at his/her family. In case of third country groups with no EU group supervision the level of details provided about the IGT and RC is not the same as for the EU groups and the information provided depends on the third country supervisor and might not include relevant information for the major solo companies.

3.100. To close the gap, one of the proposals received by EIOPA is to align the wording in Article 13 (19) and to refer to group definition also used for the Group Solvency Calculation or Group Supervision and to include the transactions with holding companies and ancillary service undertakings.

3.101. In order to address the issues identified on the definition of IGTs as provided in Article 13 (19) of the Solvency II Directive, which leaves room for interpretation both among supervisors and industry, a possible solution could include a combined approach: firstly by amending the wording in Article 13 (19) to include also IHC, MFHC, MAIHC, and third country (re) insurance undertakings. Secondly, by reviewing any reporting guidelines to ensure consistency of approaches across Europe.

Please note that as clarified in the instructions of the templates, "when there is a chain of related IGTs (say A invests in B and B invests in C), each link of the chain needs to be reported as a separate IGT". This is applicable when the insurance and reinsurance undertaking involved relies, either directly or indirectly, on other undertakings, e.g. if A is an insurance undertaking, B is an insurance holding company (IHC) and C is a mixed activity holding company (MAIHC).

Information about the transactions which do not fall under the scope of the above mentioned definition may be systematically requested in addition by the relevant supervisory authority on the basis of Article 254 of the Solvency II Directive, according to which supervisory authorities shall have access to any information relevant for the purpose of group supervision, regardless of the nature of the undertaking concerned. In particular, considering recital 109 of the Solvency II Directive, by which supervisory authorities should be able to exercise supervision over risk concentrations and intra-group transactions, taking into account the nature of relationships between regulated entities as well as non-regulated entities, including insurance holding companies and mixed activity insurance holding companies, and take appropriate measures at the level of the insurance or reinsurance undertaking where its solvency is being or may be jeopardised, the IGTs between an IHC, MAIHC or mixed financial holding company (MFHC) may be requested to be reported systematically together with the other IGTs.

Number of cases of application of Article 213 (3) of the Solvency II Directive and the impact and challenges of the application of such provisions on the supervision of IGTs within an insurance group

- 3.102. EIOPA is aware of two cases in which based on Article 213 (3) of the Solvency II Directive where the NCAs are supervisors of either the ultimate (re)insurance parent undertaking or the IHC or MFHC and decided to require the reporting of IGTs only at the broader scope and level of the financial conglomerate that encompasses the reporting at the insurance group level, in application of the waiver as for Article 213(3).
- 3.103. Both cases did not have an impact or challenge on the provision of supervision. In the first case, no challenge was identified as the head of the insurance group coincides with the head of the financial conglomerate. In the second case, the group supervisor had to ensure that the information regarding IGTs was still sufficient for the purpose of group supervision under Solvency II, e.g. by adjusting the thresholds for IGT reporting for the financial conglomerate. In addition, the requested information was submitted in a different format than the one requested for the supervisory reporting under the Commission Implementing Regulation (EU) 2015/2450. Positively, the decisions avoided the double flow of information.

Nature and volume of the main risk concentrations (RCs) reported by insurance and reinsurance groups:

- 3.104. EIOPA calculated the risk concentration based on the exposures reported in template S.37.01 on risk concentration. Based on these figures, EIOPA focused on risk concentrations for large exposures, assets, liabilities and off-balance sheet items as well as on the sectoral risk concentration and country risk concentration.
- 3.105. The results from the calculations show that insurance groups are generally well diversified for asset classes but less for liability, sectoral and country risk exposures. This is the result of the strong concentration of exposures related to respectively insurance liabilities, the financial sector and investments in the home Member State. Please refer to Annex II for a description of the methods used and the results of the assessment.

Number of cases of application of Article 213 (3) of the Solvency II Directive and the impact and challenges of the application of such provisions on the supervision of risk concentration within an insurance group

- 3.106. EIOPA is aware of 2 cases in which based on Article 213 (3) of the Solvency II Directive the NCAs as supervisors of the ultimate insurance parent decided to require the reporting of risk concentrations only at the broader scope and level of the financial conglomerate that encompasses the reporting at the insurance group level, in application of the waiver as for Article 213(3).
- 3.107. Both cases did not have an impact or challenge on the provision of supervision. In the first case, no challenge was identified as the head

of the insurance group coincides with the head of the financial conglomerate. In the second case, the group supervisor had to ensure that the information regarding risk concentration was still sufficient for the purpose of group supervision under Solvency II Directive, e.g. by adjusting the thresholds for risk concentration reporting for the financial conglomerate. In addition, the requested information was submitted in a different format than the one requested for the supervisory reporting under the Commission Implementing Regulation (EU) 2015/2450. Positively, the decisions avoided the double flow of information.

Potential divergent practices of supervision of both intra-group transactions and risk concentrations, and their impact

3.108. The potential divergent practices of which EIOPA is aware stem mainly from the gaps identified in the definition of the IGTs as provided in Article 13(19) of the Solvency II Directive (please see section 3.103). In addition, the NCAs highlighted the following in their responses to the survey:

- Inclusion in local regulation an IGT definition covering transaction concluded by, at least, the ultimate IHC or MFHC of the group with another counterparty of the group other than the insurance undertaking.
- Divergence in the IGTs reporting requirements as some NCAs require IHCs and MFHCs to be treated as (re)insurance undertakings for the purpose of IGTs. In their view proper group solvency calculation and supervision of IGTs cannot be exercised if these IGTs are not reported on a regular basis as they can have a negative impact on the solvency of the (re)insurance undertakings in the group.
- Different procedures and thresholds set up for each group for the identification and reporting of significant RC and IGTs or IGTs to be reported in any circumstance. Setting thresholds that are too high or too low may impair the analysis of transactions that can be important in understanding the overall risks of the group.
- In the case of third country group operating in several EU Member States but without a single consolidating undertaking in the EU, obtaining information on IGTs might be a challenge due to the absence of a group level supervision.

3.109. In spite of the supervisory convergence challenges noted above, it should also be noted that EIOPA and NCAs are working closely in identifying good practices that can support the analysis and monitoring of IGTs and RCs. Based on EIOPA's previous analysis and discussions with supervisory colleges during 2017, it was considered a good practice:

- a. For significant IGTs to consider indicators that take into account the risk profile of the individual undertakings as IGTs can significantly affect their solvency and liquidity; and complement it with thresholds for type of IGTs.
- b. For very significant IGT to consider indicators that take into account the risk profile of the individual undertakings and coupled it with the definition of qualitative criteria capturing IGTs to be reported in all circumstances, such as:

- IGTs subject to a case-by-case assessment of the undertakings' AMSB, irrespective of their value;
 - IGTs not included in accordance with arm's-length principle;
 - IGTs particularly complex;
 - Unplanned move of capital or income, particularly IGTs not supported by the capital policy or dividend policy (for the group and related undertakings);
 - Transfer of unusual or large amounts of capital or income from undertakings, particularly transactions close to year-end, without proper collateralization, or due to material change in the nature, scale or complexity of the group or related undertakings;
 - IGTs not supported by adequate risk-management processes and internal controls or where a material governance failure is detected for significant IGTs.
- c. As with regards to RCs, it was considered a good practice to combine the quantitative threshold with the threshold for significant concentrations by the counterparty applied to instruments types capturing type of RCs to be reported in all circumstances (e.g. different thresholds depending on the rating) including bank deposits, equity, government bonds, financial corporate, non-financial corporate. It was also noted that the QRTs (in particular S.37) should be complemented with explanations on how and why data is aggregated.

3.110. Based on the experience collated during EIOPA Oversight activities, the importance for NCAs to enhance the effective and consistent implementation of a supervisory review process of IGTs and RCs and focus on the interconnectedness of insurance groups are noted. In particular for groups with high interconnectedness, it is necessary to increase the understanding about what the groups add in terms of risks due to IGTs and RCs, and further investigate the terms and impact of this interconnectedness.

3.111. Taking into account the need for convergence on IGTs and RCs, EIOPA's supervisory convergence plan also includes the supervision of IGTs and RCs, the work carried out through the development of the SRP handbook and SRP training helps to address supervisory convergence issues. Nonetheless, this work does not close the regulatory gap identified on the definition of IGTs.

Number of cases where group supervisors applied enforcement measures in accordance with Article 258 (1) of the Solvency II Directive, and the triggers and content of such measures

3.112. EIOPA is aware of one case where enforcement measures under Article 258 of the Solvency Directive have been applied both at solo and group level. In that case the implemented measures included:

- a recapitalisation plan;
- reduction of the risk profile;
- dividends retention;
- authorisation of IGTs by the supervisory authority;
- adding of additional measures to address potential conflicts of

interests between the administrative, management or supervisory body (AMSB) of the insurance undertaking and the rest of the group, including the AMSB of its parent company.

Intra-group transactions and risk concentrations and links to financial conglomerates

3.113. EIOPA is aware that there are currently differences in the scope of the IGTs and risk concentration to be reported under Solvency II compared to the Financial Conglomerates Directive (FICOD). FICOD definition of risk concentration is much clearer³¹ than the definition under Solvency II.

3.114. There are no standardized reporting templates for financial conglomerates, which has an effect on the consistency of the information reported across the groups and at the same time restricts an efficient analysis of the IGTs and RCs at group supervisory level.

3.115. We note that to address the above issue the Joint Committee on Financial Conglomerates Taskforce (JCFC TF) is currently working on ITS on IGTs and RCs with the aim to achieve harmonised templates for financial conglomerates. It is our understanding that the gaps identified in this report regarding the definition of IGT in Solvency II are aligned to some of the discussions of the JCFC TF.

Preview and supervision of the IGT of a subsidiary in cases where the ultimate parent undertaking is based in a third country with no sub-holding at EU level

3.116. In the case of non-equivalence and when there is no sub-holding at the European level, the group supervisor can apply "other methods" according to Article 262 (2) of the Solvency II Directive to receive information on IGTs. As a result, the NCA receives information on IGTs between the EEA entities and the wider group. Information received from the undertakings is then disseminated to all other concerned EU supervisors. If deemed necessary the solo supervisor of the subsidiary can also request information regarding IGTs where this subsidiary is a party.

3.117. In some cases, there is no general process but the supervision depends on the (non-)equivalence of the third country supervision. In the case of full equivalence, there is no review or supervision of IGTs at the European level. For the purpose of the group-wide supervision, the information is expected to be accessible through interactions between the involved supervisory authorities, EIOPA and through the supervisory college.

3.118. In one case there is also a close monitoring of IGTs at solo level for

³¹ According to Article 2, Definitions 19 of FICOD Directive 2002/87 "risk concentration" shall mean all exposures with a loss potential borne by entities within a financial conglomerate, which are large enough to threaten the solvency or the financial position in general of the regulated entities in the financial conglomerate; such exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks."

the small supervised undertakings, while for the medium-sized in an equivalent country there is an information exchange within the Colleges of Supervisors.

3.119. It is also noted by some NCAs that certain IGTs have to be approved by the NCA.

3.120. It is noted by some NCAs that all investments on a single item basis (yearly) are analysed and the reinsurance contracts monitored via reinsurance templates on contract level. Reinsurance undertakings are required to notify all IGTs above a certain threshold regardless where the other affiliates of the group are based.

3.3.5. Reflections on IGTs & RCs

3.121. EIOPA has identified a gap in the definition of IGTs as provided in Article 13 (19) of the Solvency II Directive, which leaves room for interpretation both among supervisors and industry. Such gap has a direct impact on an effective supervision of IGTs as well as appropriate data reporting comparisons. The definition does not explicitly include the reference to the IHC, MAIHC or MFHC as one of the possible counterparties of the IGT. The definition is also not clear on the scope for reporting on natural persons that are related parties (e.g. at Board Members, Supervisory Board Members, and/or also at his/her family members). Hence, the possible solutions could include a mix approach. Firstly by amending the wording in Article 13 (19) of the Solvency II Directive to include also IHC, MFHC, MAIHC, and third country (re)insurance undertakings. Secondly, by reviewing any reporting guidelines to ensure consistency of approach across Europe.

3.122. Furthermore, another challenge identified relates to the cases of third country groups with no EU group supervision where the level of details about the IGTs and RCs is not the same as for the EU groups and the information provided depends on the third country supervisor and might not include relevant information for the major solo companies. This issue may need to be addressed on a case-by-case basis but always aiming for supervisory convergence across European group supervisors.

3.123. EIOPA notes that there is not a specific definition of Risk Concentration in the Solvency II Directive. Article 13(35) of the Solvency II Directive defines concentration risk and Article 376 of the Delegated Regulation sets out the list of direct and indirect exposures to be considered for the purpose of identifying significant RCs.

3.124. EIOPA notes in overall the challenge posed on the supervision of IGTs and RCs, in particular regarding the application of thresholds. Setting thresholds that are too high or too low may impair the analysis of transactions that can be important in understanding the overall risks of the group. Thus, it is EIOPA's view that further convergence can be sought and the NCAs could benefit from further guidance in setting up thresholds and supervision of IGTs and RCs. It is also reflected that thresholds should be seen both from a quantitative and qualitative point of view.

3.125. Based on the experience collated during EIOPA Oversight activities, the importance of an effective and consistent implementation of a supervisory review process of IGTs and RCs, and focus on the interconnectedness of insurance groups is noted.

3.4 Diversification Effects between undertakings of a given group

3.4.1 COM's Request

COM's Info Request

Recital 101 of Directive 2009/138/EC provides that global diversification of risks that exist across all the insurance and reinsurance undertakings in a group should be taken into account when calculating the consolidated Solvency Capital Requirement.

- 3.4.1 the amount and allocation of diversification benefits between insurance and reinsurance undertakings in a given group, which are recognized when calculating group solvency capital requirements both where the standard formula is used and where an internal model is applied;
- 3.4.2 divergences of practices on how the solo SCR might be seen as a barrier to transferability of own funds in accordance with Article 330 of the Delegated Regulation (EU) 2015/35 and their impacts.

3.4.2 Findings on Diversification Effects between undertakings of a given group

Diversification Benefits and Analysis at EIOPA³²

3.126. Solvency II brought a risk-based approach to the capital calculation which is a welcome approach, especially by insurance groups as it supports the intrinsic nature of the insurance business model. Capital is held to support all the risks to which a solo undertaking or a group is exposed to and diversification effects are derived from some risks offsetting others. Diversification effects take into account the risk profile and structure of the group through different levels and the technical allocation of the results to these levels will vary depending on the calculation approach and method chosen to determine the solvency capital requirements.

3.127. EIOPA acknowledges that considering the information available (e.g. reporting templates, information exchanged among the College of Supervisors, internal models groups, etc.), EIOPA in the given timeframe for the answer to the COM request was not in a position to carry out a granular analysis of the amount and allocation of diversification benefits of Standard Formula and Internal Models across all insurance groups subject to the Solvency II framework, nor to analyse any potential links between the diversification effects between solo undertakings and its contribution to group capital distribution.

³² EIOPA's comments on Diversification Effects between undertakings of a given group in this report focuses on group issues. The analysis is based on the current Solvency II framework and it does not take into account any reflections on possible changes to the framework discussed as part of the SCR review (look-through approach at group level , section 16 of the second set of advise)

- 3.128. The current structure of the QRTs templates does not facilitate a granular analysis of diversification benefits. It is noted that diversification effects for internal models are available in the application packages submitted to NCAs. However, it was not possible to carry out a systematic analysis of such diversification effects.
- 3.129. The Solvency II Directive refers in Article 246 to the fact that groups using Method 1 should provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement. Some NCAs are of the view that this requirement could be further supported by concrete supervisory reporting requirements, for both groups using standard formula and internal models.

Diversification Benefits and Analysis carried out at National Level

- 3.130. EIOPA's understanding is that the supervisory authorities carry out an analysis of diversification benefits. The approach to it varies, is generally tailored to the specific structure of the group and usually completed on a case-by-case basis.
- 3.131. EIOPA notes from discussions with NCAs and the survey that there are challenges in carrying out a deep dive analysis of diversification effects against peers as every group has its own peculiarities and it is difficult to find a group that is structured and has a risk profile similar to another group.
- 3.132. Nonetheless, NCAs have identified ways to carry out their own analysis, which covers among others:
- a. Conducting analyses of diversification effects and capital distribution in connection to internal model approval processes and follow-up on internal model(s). In some cases a brief ad hoc analysis of capital allocation may also be carried out during a review of group Solvency II reporting.
 - b. Assessing the level of diversification benefits in the context of the group solvency calculation assessment on an annual basis.
 - c. Performing consistency checks of relevant QRTs by applying ratio analysis, analysis of group narrative reporting (group ORSA, group SFCR, RSR), and narrative reporting of solo undertakings, where relevant, any additional ad-hoc information received from groups following from the NCA's request.
- 3.133. About half of the Member States indicated that they have a process in place to supervise diversification effects. Some Member States indicated that they have started developing a supervisory process which in addition to the general checks ensures that the quantitative and qualitative disclosures are in line with their understanding of the group.
- 3.134. The NCAs analysis covers the different levels of aggregation taking

into account the volume drivers, risk profile and external environment. In the case of internal models, model changes are also taken into account.

3.135. Based on the responses from NCAs, it is indicated that the diversification effects of the groups under their supervision is aligned to their understanding of their groups. It is also indicated that group supervisors are not aware of any differences between a group's perception of the major diversification benefits and the group's supervisor perception of the diversification benefits.

Diversification Benefits – Challenges and Impact Analysis

3.136. A consistent quantitative analysis is not possible based on the current data available to EIOPA. In addition, there is a challenge of having comparative data for two reporting periods. NCAs were asked what in percentages is the amount and allocation of diversification benefits between the (re)insurance undertakings in a group which are recognized when calculating the group solvency requirements. At least one NCA stated that the diversification benefits as a proportion of the sum of solo capital requirements ranged from zero to about a third. It should be noted though that the majority of the NCAs indicated that they were not in a position to provide an answer.

3.137. NCAs indicated that these percentages are group-specific depending on the structure of the business each group is involved in.

3.138. NCAs highlighted that challenges already exist on the analysis of diversification benefits as noted from a variety of scientific literature, but also from a practical point of view. E.g. if there was no access to the information underlying solo undertakings' SCRs and risk profile information such as the cases of related undertakings based in a third-country jurisdiction, where there are limitations in data access).

3.139. A common challenge noted by group supervisors derives from the fact that there is not a harmonised approach to some of the regulatory reporting requirements. For instance, in the ORSA, groups should provide a "proper understanding of the difference between the sum of the Solvency Capital Requirements of all related (re) insurance undertakings of the group and the group consolidated capital requirement (Article 246(4) of the Solvency II Directive). Similarly, in the Group Solvency and Financial Condition Report, the requirement for groups to provide qualitative and quantitative information on the material sources of diversification effects is clearly outlined in Article 359 (e) (iv) of the Delegated Regulation.

3.140. The quality of the information provided to the group supervisors under Article 246(4) varies. One NCA indicated that it is sometimes difficult to identify the different sources of diversification benefits in a group (e.g. other than the total amount disclosed in the QRTs). Groups usually report in their RSRs and ORSAs the inter/intra modular diversification but this usually replicates the analyses done at solo level. Thus, the supervisory challenge at group level is how to

carry out a granular analysis based on current reporting available that allows a clear understanding of the diversification benefit that arises between different portfolios, lines of business and interlinkage with geographical/cross-border diversification. In most cases, group supervisors need to engage with the group and do so to understand the complex aggregation structures.

- 3.141. Another NCA noted that modelling diversification in general is essentially done bottom up, analyzing dependencies of losses and events. This holds true for both the standard formula approach as well as for internal models. Differences between groups are essentially driven by the concrete risk profile.
- 3.142. Furthermore, material aspects that deserve particular attention are: (i) elimination from intra-group-transactions (IGTs), the impacts of which could be material as their quantification is not always straight forward; (ii) availability of data from entities in other countries at national level and from third countries at EEA level; (iii) loss-absorbing capacity of deferred taxes, varying between group and solo calculations as different stresses might be applied. Consequently a simple comparison of the diversified group SCR with the sum of solo SCRs needs to consider numerous aspects. Additionally, when judging such differences, NCAs take into account that different exposure to the same direction of risk factor movements (e.g. interest rate up) is not "modelled" diversification but in a sense "natural" as due to the combination of different risk profiles (e.g. in an interest rate up scenario one entity ends up with gains while another entity suffers losses).
- 3.143. The above considerations are even more relevant for the issue of capital allocation. Capital allocation could be derived from mathematical methodologies, but it is also driven by risk management preferences. For instance, interest rates risk from long-term life liabilities might diversify well with interest rate from non-life insurance, but might irrespectively not be preferred from an overall perspective. Consequently, the diversification benefit would not be allocated following a mathematical allocation algorithm but due to risk management preferences more to non-life than to life long-term business.
- 3.144. EIOPA's understanding is that the analysis of diversification effects carried out by the NCAs benefits from the information that supervisors receive from participating (re)insurance, the IHC or the MFHC under Article 246(4) of the Solvency II Directive. Nonetheless, challenges exist for a full comprehensive analysis of diversification benefits.
- 3.145. Some group supervisors would welcome a minimum level of convergence regarding reporting disclosures³³ for diversification. While other group supervisors point out, that a full standardized single approach for such analysis is not practicable and may thus not be favoured in all cases given the complexity and peculiarity of each group. In this regard, a combination of tools could be used, subject

³³ Other than what is currently provided in the QRTs. (As the info on the QRTs is not enough for supervisory analysis)

to a detailed assessment, to improve supervisory convergence (e.g. potentially reviewing some of the reporting templates, as well as setting a minimum level of information and structure in which groups should share info with their group supervisors for discussion at the College of Supervisors.³⁴

3.4.3 Reflections on Diversification Benefits

- 3.146. Based on the responses from NCAs, it is indicated that the diversification effects of the groups under their supervision are aligned to their understanding of groups. It is also indicated that group supervisors are not aware of any differences between a group's perception of the major diversification benefits and the group's supervisor perception of the diversification benefits.
- 3.147. EIOPA's understanding is that the analysis of diversification effects carried out by the NCAs benefits from the information that supervisors receive from the participating (re)insurance undertaking, the IHC or the MFHC under Article 246(4) of the Solvency II Directive and Article 359 (e) (iv) of the Delegated Regulation. In this regard, the quality and granularity of information provided to group supervisors varies, taking into account that there is no minimum harmonised reporting structure for diversification benefits.
- 3.148. EIOPA notes that NCAs have different approaches to analyse diversification benefits. In most cases described by the NCAs in response to EIOPA's survey, the supervisory approach is tailored to the risk, nature, scale and complexity level and scope of the groups, and combines both a qualitative and quantitative analysis. Supervisors support their analysis with information available in the ORSA and the SFCR and check whether the extent of the diversification benefit taken into account by a group is consistent with their understanding of the group risks.
- 3.149. It is also noted that diversification benefits in practice are more often analysed for groups that have applied for a Solvency II internal model to calculate its solvency requirements because the calculation methodology is not standardized and the aggregation approach was tailored to the concrete case and thus has more attendance.
- 3.150. EIOPA also notes that there are challenges in carrying out a meaningful comparative analysis of diversification effects across groups due to the intrinsic nature of each group. Another challenge for EIOPA is currently posed at times by the data availability and quality of the information in the QRTs.
- 3.151. In EIOPA's view, a detailed analysis of the diversification effects is a priority for all groups independently of the approach used to calculate solvency requirements (Standard Formula or Internal Models). It is

³⁴ This may need a legal support for this information to be discussed at the College of Supervisors.

also recognised by NCAs that there is a need to further deep-dive into the understanding and analysis of diversification effects. Preference is to have a combination of quantitative and qualitative analysis that supports supervisory judgment.

3.152. Some group supervisors would welcome a minimum level of convergence regarding reporting disclosures³⁵ for diversification. While other group supervisors point out, that a full standardized single approach for such analysis is not practicable and may thus not be favoured in all cases given the complexity and peculiarity of each group. In this regard a combination of tools could be used, subject to a detailed assessment, to improve supervisory convergence (e.g. potentially reviewing some of the reporting templates, as well as setting a minimum level of information and structure in which groups should share info with their group supervisors for discussion at the College of Supervisors.³⁶

3.153. EIOPA's comments on the supervisory practices regarding how the solo SCR might be seen as a barrier to transferability of own funds in accordance with Article 330 of the Delegated Regulation (EU) 2015/35 and their impacts is presented in Section 3.6 of this report.

³⁵ Other than what is currently provided in the QRTs. (As the info on the QRTs is not enough for supervisory analysis)

³⁶ This may need a legal support for this information to be discussed at the College of Supervisors.

3.5 Mediation of supervisory disputes

3.5.1 COM's Request on Mediation of Supervisory Disputes

EIOPA is asked to provide, *inter alia*, information on:

- 3.5.1 the number of cases where binding and non-binding mediations were requested to EIOPA, and an analysis of such cases;
- 3.5.2 how EIOPA monitors the correct application of the decisions made by an EIOPA's mediation panel.

3.5.2 Findings on Mediation of Supervisory Disputes

EIOPA's role in mediation of supervisory disputes

- 3.154. Solvency II provides several instances in the context of group supervision where the NCAs may refer their dispute to EIOPA for binding mediation (e.g. joint decision on group internal model, college of supervisors, cooperation between supervisory authorities etc.). EIOPA's mediation role in these cases should ensure impartial, quick and efficient dispute resolution mechanisms for disputes arising out of group supervision. The decision of EIOPA has binding effects for the NCAs concerned.
- 3.155. There has been no request from the NCAs under the relevant provisions of Solvency II for mediation in the field of group supervision. EIOPA has also not used its power for own initiative mediation in this regard to date.
- 3.156. However, there have been requests from the NCAs for non-binding mediation in the context of cross-border issues. Article 31 of Regulation (EU) No 1094/2010 empowers EIOPA to carry out non-binding mediation upon a request from the NCA or on its own initiative. On this legal basis, EIOPA published its first mediation opinion in June 2018, which concerned the determination of the correct insurance class for a specific insurance product. The proceedings revealed that in the absence of concrete rules in the Solvency II Directive, it is very challenging for EIOPA to form a legally sound position in certain matters, like the classification of insurance products. Nonetheless, the NCAs supported EIOPA's efforts to bring more convergence in those areas, where Union law does not define rules and there is a risk for regulatory arbitrage.
- 3.157. The monitoring of compliance with the mediation opinion is ensured by EIOPA based on the feedback of the parties involved. According to this opinion, the NCAs concerned are requested to report back to EIOPA's Mediation Panel within six months on how they implemented the guidance provided in the opinion.

3.158. The above referred non-binding mediation and other breach of Union law investigations showed that the high-level principles provided at Union level may easily create room for regulatory arbitrage. For instance, concerning the assessment of fitness and propriety of shareholders there are divergent views and approaches amongst the NCAs and this created an un-level playing field. Even though the ESAs issued joint guidelines to support the consistent assessment, the current cases show that based on the same factual background and legal framework the NCAs made opposite conclusions. EIOPA works with those authorities to find a common solution, but it must be acknowledged that the legal constraints stemming from the Solvency II Directive or national laws considerably limit the room for maneuver to prevent material differences in supervisory approaches.

3.5.3 Reflections on Mediation of Supervisory Disputes

3.159. EIOPA notes that the NCAs have not made a request to EIOPA under the relevant provisions of the Solvency II Directive for binding mediation in the field of group supervision.

3.160. EIOPA has been approached by supervisory authorities regarding non-binding mediation of cross-border issues. Most recently, EIOPA issued its first mediation opinion and there are other ongoing proceedings.

3.161. Based on the current experience with non-binding mediations, EIOPA is of the view that the current empowerments in the Solvency II Directive are not sufficient to tackle the wide range of disputes between home and host supervisors in cross-border situations. Therefore, it is EIOPA's view that it could be appropriate to introducing a separate empowerment to cover also cross-border issues by mediation could be useful to effectively tackle such supervisory disputes.

3.6 Barriers to Asset Transferability

3.6.1 COM's request on Barriers to Asset Transferability

EIOPA is asked to provide, *inter alia*, information on:

- 3.6.1 the main barriers in national insolvency and winding-up legislation to asset transferability within insurance and reinsurance groups in the EEA as well as to their efficient capital management;
- 3.6.2 the main company or corporate law barriers to asset transferability between insurance and reinsurance undertakings within a group, in particular in a cross-border context;
- 3.6.3 the amount and nature of non-available items in accordance with Article 330 of the Delegated Regulation (EU) 2015/35, and of the major legal and regulatory barriers to transferability;
- 3.6.4 potential divergences between NCAs in assessing the availability of any own fund at group level, and their impact;
- 3.6.5 potential divergences in assessing whether own-funds can be made available within a maximum of 9 months in accordance with Article 330 (1) (c) of the Delegated Regulation (EU) 2015/35, and their impact;
- 3.6.6 the main obstacles to transferability of assets where related insurance or reinsurance undertakings are headquartered in third countries.

3.6.2 Findings on Barriers to Asset Transferability

Main barriers in national insolvency and winding-up legislation and in company or corporate law to asset transferability within insurance and reinsurance groups in the EEA as well as to their efficient capital management

3.162. EIOPA is aware that in the majority of the Member States national law (e.g. company or corporate laws, insolvency/winding up law, etc.) can pose clear barriers to asset transferability within a group (both in case of insolvency and winding-up and in case of capital management situations).

3.163. The differences in the existing barriers to asset transferability depend on whether there is an insolvency/winding up procedure or whether it relates to a capital management situation (see Annex IV for examples shared by the NCAs on a best effort basis).

Main company or corporate law barriers to asset transferability between insurance and reinsurance undertakings within a group, in particular in an EEA cross-border context;

3.164. Any restrictions at national level will affect the transferability of assets on a cross-border basis. In addition, to the information presented in the Annex IV, EIOPA is aware of the following main barriers to asset transferability in a cross-border context. Answers were provided by the NCAs, and the cases noted apply at least to one NCA:

- a. Restriction with respect to public/non-profit capital available at solo level (health sector).
- b. National law does not allow for "cascade insolvencies" or "group insolvencies" i.e. each company will be individually assessed.

- c. In case of winding up and insolvency the restrictions/barriers are decided case by case by a special public body. If there is a possibility of bailiffs then according to the corporate insolvency law the operations of the preceding two years of insolvency can be subject to revision with a possibility of retroactivity.
- d. In case of capital management, there is a restriction in the NCA's legislation in case of acquisition of significant participations in another insurance company.
- e. In case of insolvency in order to prohibit assets transferability one NCA indicated it can use:
 - i. administration (to afford the protection by the Court to an insurance undertaking that is at risk of insolvency or has been unable to comply with its regulatory obligations), where a prior sanction of the Court is required for any attachment, sequestration, distress or execution of the property.
 - ii. examinership - general company law process, which applies to private companies. It is limited by share and places a company under Court protection in order to enable the examiner appointed by the Court to investigate the affairs of the company and to report to the Court.
 - iii. liquidation - procedure for winding-up an insurer.

3.165. Issues concerning the availability of certain assets (e.g. intangible assets including deferred tax assets) are more prevalent where parts of a group are outside of the EEA and brought into the group calculation using Method 2 and local regulatory bases. NCAs follow the advice provided in EIOPA's Opinion on the Group Solvency Calculation in the Context of Equivalence (EIOPA-BoS-15/201). For most groups, where the parent is located outside of the EEA in case of equivalence, the group solvency calculation is based on the parent's regulatory regime applied at the level of the parent. In general, that would include the third country regime's approach for assessing availability of own funds.

3.166. For the non-EEA entities the national restrictions on the own funds availability might be different than the ones available at EU level.

3.167. EIOPA is aware of 2 cases where a transfer of assets was necessary, when related (re)insurance undertakings are headquartered in the EEA since 1st of January 2016. In both cases, no obstacles have been identified. In one case, a substantial cross-border transfer of capital took place in order to keep a desired capital cushion in place at the level of a solo undertaking.

Main obstacles to transferability of assets where related (re)insurance undertakings are headquartered in third countries

3.168. EIOPA notes that NCAs are aware of the challenges posed when dealing with third countries, in particular when there is neither equivalence nor a clear understanding of the legal regimes applying in third countries. Some NCAs noted that specific conditions apply to subsidiaries established in third countries, which will limit the transferability of assets.

- 3.169. In case the parent company of the group is located outside the EEA, then in case of winding up following the national winding-up legislation, the claims on the assets of each solo company follow a specific prioritization. First are direct policyholders and beneficiaries of the solo undertaking under liquidation. In case of any other assets, other creditors come second. This process is not subject to a judge.
- 3.170. EIOPA is not aware of any cases where a transfer of assets was necessary, when related (re)insurance undertakings are headquartered in third countries since 1st of January 2016. Based on the information available, EIOPA cannot comment if the challenges noted by the NCAs have been considered on the assessment of the availability of own funds. Hence, EIOPA cannot report whether there was an outcome based on such challenges.

Is the solo SCR seen as a barrier to availability of own funds in accordance to Article 330 of the Delegated Regulation (EU) 2015/35?

- 3.171. In some NCAs the own funds in excess of the SCR contribution of an undertaking can be regarded as available own funds at group level, except in the cases foreseen in Article 330(3) and (4) of the Delegated Regulation.
- 3.172. EIOPA notes the existence of different practices regarding whether the solo SCR should be seen as a barrier to transferability of own funds. The discussions touched on the subject of whether seeing the solo SCR as an absolute barrier could impact the use and application of diversification benefits from a group perspective. In addition, the analysis required looking into what were the national supervisory practices on the assessment of availability at group level of the eligible own funds of related undertakings. EIOPA's answer on Q&A 438 reflects the view of the majority of NCAs and it best illustrates the discussions held on this subject. The full answer is included for your convenience:

"Requirements set in Article 100 of the Solvency II Directive should in principle not be considered as restricting the availability of the own fund items or of the assets at the level of the group, in the meaning of Article 330 of Commission Delegated Regulation 2015/35.

This does not preclude NCAs from challenging the availability and transferability of own funds as assessed by groups. As a result of any challenge posed by NCAs, some own funds may be deemed to be not available.

In any case groups should be able to demonstrate the availability and transferability of any own funds when requested/challenged by NCAs. More generally, it is required for groups to set out their own assessment of any items which might be deducted from own funds owing to any significant restriction affecting the availability, fungibility or transferability of own funds within the undertaking. This requirement is outlined by Article 297 (1) (h), Article 359 (e) (ii) and Article 372 (2) (c) (xi) of the Delegated Regulation as well as Article 246 (4) of the Solvency II Directive.

Groups should engage from an early stage with the group supervisors

regarding any doubts on the availability and transferability of those own funds.”

- 3.173. When approving the answer to this Q&A, EIOPA BoS acknowledged the need to continue working on further enhancing supervisory convergence in this area.
- 3.174. EIOPA also notes that a solution from a regulatory point of view cannot be excluded when looking at the issue if the solo SCR should be seen as a barrier to the transferability of own funds in accordance to Article 330 of the Delegated Regulation.

Amount and nature of non-available items in accordance with Article 330 of the Delegated Regulation (EU) 2015/35, and of the major legal and regulatory barriers to transferability

- 3.175. The major non-available own fund items in accordance with Article 330 of the Delegated Regulation are considered to be deferred taxes, minority interests, ancillary own funds, preference shares and subordinated liabilities. Total non-available own funds amount to €46 billion at 31 December 2017, calculated for the total group. More information and a breakdown of the non-available items is included in Annex III.
- 3.176. In addition to the ring-fenced funds, there are also own funds unavailable to cover the Group SCR due to fungibility restrictions stemming from national laws.
- 3.177. EIOPA is aware of the existence of some national specific non-available own fund items. For instance:
- a. equalisation provision,
 - b. minimum share capital,
 - c. legal reserves,
 - d. contingency reserves,
 - e. profit participation of life insurance company in the group,
 - f. some of the surplus funds from health insurance undertakings.
- 3.178. In case of mutuals, one jurisdiction has indicated that under its supervisory approach no element of own funds above the contribution of undertakings to the group SCR should be automatically treated as available, neither would be the diversification benefit. If the group (in case of financial solidarity) can demonstrate its ability to transfer own funds then such own funds can be considered as available and in such a case the group SCR ratio could exceed 100%. EIOPA notes that this is a very specific treatment.
- 3.179. Other elements noted by NCAs to be considered for the assessment of availability include whether the articles of association explicitly mention limited financial solidarity in the case of mutuals, competition law and market conditions in case of ceding an undertaking. In case of intra-group transfers of capital instruments, the initial allocation of capital and the tiering limits (if any) are also

considered, legal restriction of the life insurance companies that may not distribute profits since the surplus from these undertakings cannot be made available at group level.

3.180. It is also noted that there is a difference with third countries when some assets might be recognised by the local regimes and are therefore included in the local net asset value while under Solvency II they would not be recognised (e.g. goodwill). As a result, when a third country undertaking is integrated with Method 2, the goodwill would be included in the EU group own funds despite the fact that such an own fund item is not effectively permissible as an eligible own fund under Article 330 of the Delegated Regulation (e.g. it is considered to be non-transferable within 9 months unless the group is able to demonstrate how goodwill can be transferred into cash).

Potential divergences between national supervisory authorities in assessing the availability of any own fund at group level, and their impact

3.181. Some of the NCAs indicated that they have not performed an assessment of availability required under Article 330 of the Delegated Regulation at year end 31 December 2017. Some NCAs have indicated that they started an assessment of availability of group funds during 2018, and indicated they have a SRP process in place.

3.182. In cases where an assessment of availability of eligible own funds at group level is carried out, the following has been considered:

- Some NCAs on the basis of the annual group QRTs and meetings with (re)insurance undertakings analyse whether elements, which in principle are not available, like ancillary own funds, equalisation provision, deferred tax assets are available and transferable within the groups.
- Risk mapping at group level, where the risk profile, structure and complexity of the group is taken into account.
- The result of the assessment performed by the groups is in some cases provided to the NCAs. The result is used by the NCAs in their analysis of group QRTs and group narrative reporting (group ORSA, SFCR, RSR, GSII recovery plans), as well as in narrative reporting of solo undertakings, where relevant, and any additional ad-hoc information received from groups as to whether deductions for non-available own funds at group level are required based on the results of the analysis.

3.183. It is noted that the topic of availability of own funds in some cases is discussed within the College of Supervisors as well as with the group and is assessed during on-site inspections.

3.184. The quality of the information submitted to NCAs (e.g. QRT, qualitative information) is also considered as a challenge. The content of the QRT's does not provide information on whether an availability assessment actually has been performed. In such situation, the knowledge of the group's own fund items and the general situation of the group is deemed essential.

- 3.185. Potential divergence could exist in the communication of the NCAs with the groups to require them to explain to the NCA their own availability assessment and also the communications with other NCAs (in cross border groups) in the Colleges to obtain information on the barriers to transferability in their national legislation.
- 3.186. EIOPA is aware of a number of challenges that may occur when assessing the transferability of assets in cross-border groups. One of them is triggered by the complexity of the exercise, which requires the group and solo supervisor to have a deep legal knowledge about the nature of own funds which is especially the case for large groups. It is noted at least by one NCA that there is a challenge for group supervisors assessing any restrictions to transferability of assets, in particular when looking at instruments like guarantees (ancillary own funds).
- 3.187. Another challenge is triggered by the number of variables to be considered in the assessment of the availability of own funds and how to ensure consistency in the assessment. For instance, a reasonable justification of the 9 months criterion (Article 330(1)(c) of the Delegated Regulation). Please refer to the next sub-heading for further information.
- 3.188. Taking into account that the treatment of minority interest is not exhaustively covered in the regulation, EIOPA clarified in a specific guideline the process that is to be followed with regard to the calculation of the amount of minority interests to be deducted from the group own funds. Nevertheless, potential divergences may still exist regarding the supervisory review of the minority interest calculated by groups as well as regarding the assessment of their availability.
- 3.189. Another potential area of divergence is in the case of groups where undertakings use ancillary own funds to cover their solo SCRs. On the one hand the ancillary own funds are considered as not to be effectively available³⁷, while on the other hand own funds "below" the contribution to the group SCR (and in the "diversification benefit corridor", therefore the solo SCR in total) are deemed to be available. In such a case potential divergence might arise with the way the own funds are stacked when a NCA analyses what own funds can be accounted as available at group level.
- 3.190. Specific national reserves, which prevent the transferability of the corresponding own funds are noted by NCAs as another challenge. It is the view of at least one NCA that assessing restrictions on the reconciliation reserve (consisting of the contributions of assets and liabilities of solo undertaking) could be of supervisory interest, especially in a winding-up event.
- 3.191. EIOPA has been informed of another area of divergence where further clarifications would be welcomed. In case of transitional

³⁷ Article 330(3) of the Delegated Regulation state the own fund items that are not to be effectively available, unless it is demonstrated otherwise to the satisfaction of the supervisory authority.

measure on Technical Provisions (TPs) that is applied at solo level, it is not clear whether the benefit from the solo transitional measure can be transferred to the group. Based on the legislation, the benefit from the solo transitional measure affects the net asset value of the beneficiary undertaking and therefore is part of the reconciliation reserve (transferable). However, as the benefit of the transitional measure strictly derives from the nature of the solo undertaking's business, portfolio and risk profile, it is not clear whether this benefit could also absorb losses anywhere in the group.

3.192. Further potential divergences on assessing the transferability arise in the case of third countries:³⁸

- a. In case of groups that operate in third countries there may be also specific regulatory rules applicable to the treatment of any surplus capital in excess of the local solo regulatory requirements, which may reduce own funds availability at group level. The basis for assets and liabilities valuation may be different and as a result, the availability of capital contributing to the group solvency calculation and the transferability of assets from these jurisdictions may be limited.
- b. In the case of equivalent third countries, where the group is using Method 1, the NCA will consider the diversification benefit as available when it is underpinned by practical cases, where the group is implementing mechanisms to make the diversification benefits available (e.g. reinsurance).
- c. Based on a case noted by a NCA, EIOPA notes that certain political and/or economical decisions made by third countries could lead to the unwinding of intra-group reinsurance treaties signed with third countries. This can have an impact on European groups. As a result, the relevant NCA has started some analysis to determine whether, under the new environmental conditions, the diversification benefit can effectively be made available.
- d. Based on another case noted by a NCA, in case of equivalent third countries, where groups are using Method 2, local regulators have powers to block dividends if local SCR ratios fall below a certain level. Some of the NCAs apply haircuts to reflect the ability of the local regulators to stop dividend payments, while others have not chosen this option.
- e. In some equivalent third countries the local prudential standards or the local regulation can prevent that some assets will be transferred to the parent undertaking. In such a case the NCA will eventually limit the available own funds of a third country (re)insurance undertaking to the solo contribution to the group SCR. In some other cases, where the existing barriers are not so strict, the own funds can be counted at group level to the extent the group demonstrates its ability to transfer own funds to the parent company.

³⁸ The comments regarding third countries, covers equivalent and non-equivalent countries. For the purpose of the US, it should be noted that there is a Covered Agreement.

f. EIOPA is aware that there are some uncertainties regarding Solvency II calculations applied to undertakings in non-equivalent third countries.

3.193. EIOPA's opinion on the group SCR calculation in the context of equivalence (EIOPA-BoS-15/201) of 25 September 2015 provides guidance to NCAs on how to deal with some of the challenges noted above.

Potential divergences in assessing whether own funds can be made available within a maximum of 9 months in accordance with Article 330 (1) (c) of the Delegated Regulation (EU) 2015/35, and their impact

3.194. In most of the cases, the assessment is performed by the (re) undertaking/group and then reviewed by the NCAs. Information about the own assessment of any own fund item which might have to be deducted from the group own funds due to restrictions that affect the availability (fungibility and transferability) is to be provided in the narrative reporting of the RSR, SFCR and ORSA.

3.195. In both cases (and independently of who carries out the assessment), there is a significant degree of supervisory judgement. The adequacy of the level of evidence provided by the groups on the availability of own funds is considered to be quite challenging. This applies especially to the scenarios under which the own funds would have to be made available to the group within a maximum of 9 months and the time that would be required to execute the necessary actions.

3.196. Group supervisors know that in some cases, where multiple actions are required to ensure own funds are available within the 9 months timeframe, the groups assumptions can be unrealistic (e.g. cases involving merger and acquisitions, disposal of subsidiaries and portfolio transfers may need more than 9 months to be successfully completed). EIOPA is aware that from a supervisory point of view it is difficult to obtain third party, independent evidence to support or adequately challenge undertaking's proposals. For instance, in one case the undertaking has indicated to the supervisor that the sale of subsidiaries in a 9 months timeframe is realistic and feasible. However, at the same time, the supervisor also reports that based on experience in dealing with similar cases where such a period was not realistic.

3.197. In addition, in one case EIOPA has been informed that there are some ambiguities of what the assessment under Article 330 of Delegated Regulation exactly means, and that it can easily be confused with liquidity requirements of assets backing own funds.

3.6.3 Findings on Own Funds – Classification of own fund items

- 3.198. Articles 331 to 333 of the Delegated Regulation outline the criteria for classification at group level of solo own funds issued by (re)insurance undertakings, MFHC, IHC, subsidiary ancillary services undertakings and third country (re)insurance undertakings. The criteria of the Delegated Regulation rely on the wording and interpretation of the framework for solo undertakings. The criteria require among others that the undertaking complies with the classification criteria set out at solo level (Articles 71, 73 and 77 of the Delegated Regulation) and that the own fund is *free from encumbrances and it is not connected with any other transaction*.
- 3.199. It is noted that the Solvency II framework does not specify what encumbrances are with one exception: A transaction, or a group of connected transactions, where the economic effect is equivalent to the holding of own shares.³⁹ In addition, there are references in a recital regarding the fact that “an item should be considered to be free from encumbrances” unless the claims relating to those own fund items rank after the claims of all policyholders and beneficiaries of the (re)insurance undertakings belonging to the group.⁴⁰
- 3.200. For instance, the encumbrance⁴¹ assessment, which is carried out at solo level may require additional assessment from a group point of view. It is noted that in practice, some group supervisors carry out additional assessments tailored to groups to ensure that own funds classification criteria is met at group level as well.
- 3.201. EIOPA Guidelines on the Classification of Own Funds (EIOPA-BoS-14/168 EN) support supervisory convergence regarding the classification of own funds. The guidelines focus mainly on issues encountered by solo undertakings. The fact that an own fund item at solo level is considered as eligible, does not necessarily imply that such an own fund item can be considered automatically as eligible at group level. Hence, questions on practical issues regarding own funds at group level become recurrent.
- 3.202. Another challenge faced by group and solo supervisors relates to the need of having a detailed legal knowledge of the instruments and complexity of terms and conditions proposed for the own funds, before they can make an assessment if such instruments fulfill the classification criteria for recognition as an own fund item.
- 3.203. For instance, in relation to a question on the specific treatment of own fund items which are issued by holding companies, EIOPA has emphasised on the need of taking into account recital 127 of the Delegated Regulation when analysing the classification of own funds. Q&A 400 of January 2016 states⁴² that the aim of the recital 127 is

³⁹ See Recital 30 of the Delegated Regulation

⁴⁰ See Recital 127 of the Delegated Regulation

⁴¹ Currently, there is an on-going debate for a Q&A on “Encumbrances” for solo undertakings

⁴² Q&A 400 reads “Recital 127 of Commission Delegated Regulation 2015/35 gives an example of features of own fund items issued by insurance holding companies and mixed financial holding companies which should result in not

to explain the requirement of Article 333(1)(b), and that this recital should be taken into account when classifying own funds items of IHC and MFHC. In addition, the existent regulatory gap is acknowledged, where neither the Solvency II Directive nor the Delegated Regulation provides a specific requirement in relation to the way of ensuring compliance with Article 333 in the context of the conditions included in this recital. It is EIOPA's understanding that most NCAs are following the advice issued in the answer provided by EIOPA but some NCAs have indicated that they would welcome clarity in the Solvency II framework on the applicability and enforceability of recital 127 of the Delegated Regulation considering its broad scope. Also, it could be clarified whether the principle set out in recital 127 also applies to groups whose parent is an (re)insurance undertaking.

- 3.204. An additional challenge regarding to the classification of own funds items relates to own funds that belong to other financial sectors. There is a growing interest for this subject as it poses practical issues on how to stack the own funds of other financial sectors within the Solvency II categories and whether the classification into the various categories is fully equivalent (e.g. if a Tier 1 from Other Financial Sectors (OFS) could be assumed to be fully taken into account as a Tier 1 under Solvency II). This subject also deserves special attention: how can own funds from OFS be effectively made available for the insurance group or the insurance undertakings. EIOPA has included the treatment of own funds of related undertakings that fall under the tier of other financial sectors in its supervisory convergence plan under the issues to be considered for groups. Nonetheless, the need for clarity in the legislative framework on any references to OFS is something that cannot be excluded at the time of writing this report.
- 3.205. Based on the information noted above, there is a clear need for the subject of group own funds to be developed further at the level of the regulations to avoid divergent supervisory practices. Adequate guidance in the classification of own fund items at group level is of utmost importance in ensuring that policyholders and beneficiaries of insurance and reinsurance undertakings belonging to a group are adequately protected.
- 3.206. EIOPA identified uncertainties, and therefore diverging practices, regarding the assessment at group level of subordinated debt instruments issued by undertakings in the group. Articles 331 to 333 in the Delegated Regulation defines eligibility criteria at group level. For example, a subordinated debt issued by a related undertaking in the group shall include a reference to the group SCR in order to be classified into one of the three tiers. This implies that an own fund

considering such own funds to be free from encumbrances. The aim of a recital is to explain the requirement laid down in the corresponding Article 333, which therefore needs to be read in light of the recital. Therefore, Recital 127 cannot be disregarded by national supervisory authorities (NCAs) and they should ensure that the condition included in this recital are taken into account when compliance with Article 333 is assessed.

Own-fund items issued by IHC or MFHC which are subject to the transitional arrangements referred to in Article 308b(9) of Solvency II Directive do not have to meet the criteria provided in Article 333 of Delegated Regulation (UE) 2015/35, including the criterion set out in Article 333(1)(b)).

As regards the way of ensuring compliance with Article 333 in the context of the conditions included in this recital, neither the Directive nor the Delegated Regulation provides a specific requirement in this regard.

item with no reference to the group SCR would be excluded from group own funds. However, Article 330(1)(d) seems to suggest on the contrary that where Method 2 is used for a related undertaking, a subordinated debt issued by that related undertaking with no reference to group SCR may still be recognised in group own funds as a non-available own funds item. Therefore, NCAs are of the view that the regulation could be further clarified to confirm whether:

- Articles 331 to 333 apply to undertakings included through Method 1 or Method 2, or only to those undertakings included through Method 1;
- A subordinated debt with no reference to group SCR may be included in group own funds;
- Article 330(1)(d) may apply in practice.

3.6.4 Reflections on Restrictions to Asset Transferability

3.207. EIOPA is aware that in the majority of the Member States national law (e.g. company or corporate laws, insolvency/winding-up law, etc.) can pose clear barriers to asset transferability within a group both in case of insolvency and winding-up and in case of capital management situations. For cross-border groups, additional challenges in assessing transferability of assets are derived from the complexity of the supervisory exercise which requires deep knowledge of the various jurisdictions where the group operates to assess if there are any restriction on the transferability of own funds instruments. Further challenges arise for groups that operate in third countries.

3.208. EIOPA notes that the subject of adequately assessing eligible own funds at group level could benefit greatly from having a more clear regulatory stand on some of the issues noted in the report to ensure a consistent approach across all Member States.

3.209. EIOPA is aware of the challenges faced by group supervisors in effectively carrying out an assessment of eligible own funds at group level under Article 330 of the Delegated Regulation. One of them relates to the consideration of whether the solo SCR should be seen as a barrier to the transferability of group own funds. In this regard, an answer to a question was published by EIOPA (Q&A 438). When approving this answer, EIOPA BoS acknowledged the need to continue to work on further enhancing the convergence of supervisory practices in this area. EIOPA also notes that a solution from a regulatory point of view cannot be excluded from the options available in dealing with this issue.

3.210. Another challenge derived from the practical application of the criteria set out in Article 330 of the Delegated Regulation, for instance how to effectively assess the 9 months criterion in practice (e.g. that groups can effectively demonstrate that the group can make own funds available in such a period). A supervisory question is at times if the 9 months period sets a realistic timeframe and an effective criterion for assessment. This can be considered both from a legal and supervisory practices point of view.

3.211. EIOPA highlights the importance that supervision of the availability at group level of the eligible own funds of related undertakings can be effectively carried out by the group supervisor, and notes divergence of practices regarding the assessments carried out under Article 330 of the Delegated

Regulation. EIOPA acknowledges that this is an area for continued work in enhancing convergence of supervisory practices. NCAs also recognise, based on the discussions on this topic, that group own funds (including the assessment of availability of eligible own funds) could benefit from further regulatory clarity and supervisory practices analysis to ensure a strong and mature application of these practices on group own funds across Europe.

3.212. EIOPA also notes that the discussions on barriers to asset transferability should be considered in conjunction with any findings noted on early intervention for groups (section 3.1) as well as the topic on classification of own funds (section 3.6.3) queried by the COM under the section of related to the level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations.

3.213. Adequate guidance in the classification of own fund items at group level is of utmost importance in ensuring that policyholders and beneficiaries of (re)insurance undertakings belonging to a group are adequately protected. For instance, the encumbrance assessment, which is carried out at solo level may require additional assessment from a group point of view. It is noted that in practice, some group supervisors carry out additional assessments tailored to groups to ensure that own funds classification criteria is met at group level as well. For instance, recital 127 of the Delegated Regulation provides guidance on how to assess encumbrances. However, the absence of a clear provision in the Delegated Regulation reflecting this recital, as well as the uncertainty regarding the scope of application and enforceability of this recital at group level, leads to potential divergent implementations in different jurisdictions.

3.214. In addition, further guidance is needed on the requirement to include a reference to the group SCR for the purpose of the classification of own funds items of IHC, MFHC and (re)insurance undertakings in accordance with Articles 331 to 333 of the Delegated Regulation. This issue also relates to the own funds items issued by third country undertakings. Finally, the treatment of own funds items belonging to other financial sectors would also benefit from further clarity.

3.7 Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations

3.7.1 COM's Request on Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations

COM's Request:

EIOPA is asked to provide, *inter alia*, information on:

- the functioning of crisis management groups, the way group supervisors and solo supervisors cooperate in crisis situations, in order to ensure an equivalent level of protection of policyholders and beneficiaries of the same group, and the issues identified that could potentially limit the protection of policyholders and beneficiaries;
- potential problems in crisis situations for cross-border groups arising from national supervisory authorities focusing on the protection of policyholders in their Member States, even when the measures taken may be detrimental to the protection of policyholders in other Member States;
- how recovery and resolution plans, liquidity risk management plans, and systemic risk management plans have been used in practice by NCAs;
- potential divergences in the supervision of the classification of own funds items of insurance holding companies, mixed financial holding companies, and subsidiary ancillary services undertakings at group level in light of Article 333 and Recital 127 of the Delegated Regulation (EU) 2015/35, and the impact of such divergent interpretations;
- cases of identification of own funds items which are not considered "free from encumbrances" in accordance with Articles 331 and 332 of the Delegated Regulation (EU) 2015/35.

3.7.2 Findings on Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations

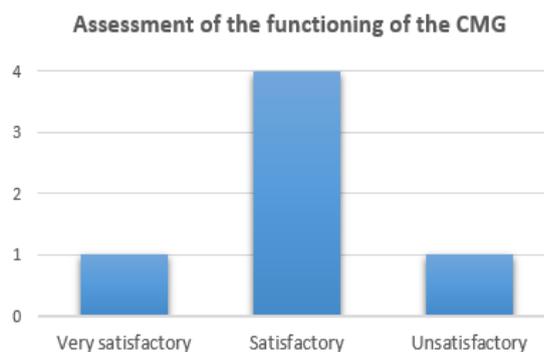
The functioning of crisis management groups, the way group supervisors and solo supervisors cooperate in crisis situations, in order to ensure an equivalent level of protection of policyholders and beneficiaries of the same group, and the issues identified that could potentially limit the protection of policyholders and beneficiaries

3.215. EIOPA is of the view that this request entails different elements that are sometimes difficult to interlink. Splitting this point into different questions was considered as the best way forward to address all relevant aspects. Furthermore, although the item seems to refer to Crisis Management Groups (CMGs), EIOPA has sought to gather information from all NCAs to ensure that other elements of interest are not lost.

3.216. EIOPA notes that the adequate protection of policyholders is the overarching objective of insurance and reinsurance regulation, as

stated in Solvency II. However, the matter of ensuring an equivalent level of protection of policyholders and beneficiaries of the same group is more complex, as it may involve a number of undertakings in different Member States with potentially diverging national legislations and, as a result, different powers. Furthermore, as noted by some NCAs, ensuring an equivalent level of protection of policyholders is not the objective of the Crisis Management Groups (CMGs).

3.217. To assess this matter, EIOPA firstly queried the NCAs which actively participate in the CMGs of the Global Systemically Important Insurers (G-SIIs) headquartered in the EU,⁴³ on how they would assess the **functioning of the CMGs**. EIOPA participates as an observer in all the above-mentioned CMGs. According to the results, the majority of Supervisors had a rather positive (i.e. satisfactory) view of the functioning of the CMGs.



3.218. A number of questions were also asked on the way group supervisors and solo supervisors co-operate in crisis situations. In general, EIOPA notes from the feedback received that the CMG facilitates cooperation and exchange between supervisors through (regular) communication and meetings, both in normal times and crisis situations. It has to be noted, however, that the systemic groups' CMGs so far never had to face a crisis situation.

3.219. Next, NCAs were asked about the **added value of the CMGs**, where EIOPA gathered mixed opinions. Some NCAs noted that at the CMG level the discussions of the recovery and resolution plans in "normal times" ensure that they are viable before a crisis occurs. CMGs also enable a co-ordinated and co-operative approach by group and solo supervisors in the preparation for crisis situations and in resolution (e.g. knowing the supervisor in charge of resolution before the crisis will facilitate communication during the crisis). Furthermore, in a crisis situation, the CMG would be the designated forum to share information, to decide and implement joint actions. On the other hand, a NCA reported that the frequency of meetings was not optimal, or noted that the information sharing was slow or inefficient. Lastly, another NCA did not see much value added value of meetings in "normal times" in addition to the existing Colleges of Supervisors.

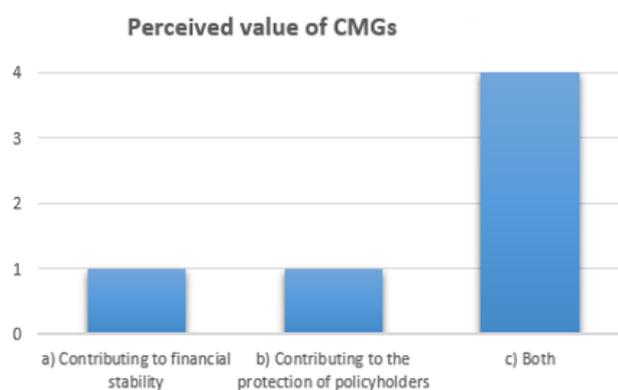
3.220. Regarding the issue of ensuring an equivalent **level of protection to policyholders** and beneficiaries equivalent within the Group, NCAs were asked about this question, as well as whether the CMG as a channel would seek to ensure it. However, the replies from

⁴³ It should be noted that respondents to these questions were not only group supervisors, but also solo supervisors participating in CMGs, where applicable.

group and solo supervisors involved in CMG activities were inconclusive, in the sense of not providing current evidence of such an equivalence in the level of protection to policyholders.

3.221. For instance, one NCA noted that the case for equivalent protection is not clear since it is not the aim of the CMG, and that identifying and focusing on the critical or important functions to be preserved in resolution of each undertaking is more important. Similarly, a NCA mentioned that this has not been the purpose of CMGs to date. Besides, it was also reported that the level of policyholder protection can be different in each jurisdiction (e.g. different resolution regimes and bankruptcy laws). Going along these lines, another NCA noted that financial stability and protection of policyholders are not ranked objectives for resolution, and thus one does not take precedence about the other. In light of all these divergences and views, EIOPA is of the view that a minimum harmonised framework in place for recovery and resolution of (re)insurers would be very useful.⁴⁴

3.222. However, the NCAs⁴⁵ reported that the CMG's work is generally perceived to be contributing to both financial stability and policyholder protection, as portrayed in the graph. It should be noted that contributing to policyholder protection does not



necessarily imply reaching an equivalent level of protection. For instance, the protection of critical functions of a group in resolution, in accordance with FSB Key Attributes, may imply an unequal treatment (e.g. flexibility is provided in departing from the *pari passu* treatment).⁴⁶

Potential problems in crisis situations for cross-border groups arising from NCAs focusing on the protection of policyholders in their Member States, even when the measures taken may be detrimental to the protection of policyholders in other Member States

3.223. EIOPA collected mixed evidence on this issue, along with few replies from Member States given that they mostly considered this question not applicable.⁴⁷ While there is not enough practical knowledge due to a lack of experience in the resolution of cross-border groups (nor

⁴⁴ A comprehensive list of drawbacks of a lack of harmonisation is further explained in Annex II of EIOPA's *Opinion To Institutions Of The European Union On The Harmonisation Of Recovery And Resolution Frameworks For (Re)Insurers Across The Member States* (2017).

⁴⁵ Again, It should be noted that respondents to these questions were not only group supervisors, but also solo supervisors participating in the CMGs, where applicable.

⁴⁶ See FSB, *Key Attributes Effective Resolution Regimes for Financial Institutions* (2011).

⁴⁷ A majority of countries considered this section not applicable, as in general they do not have an active CMG. In any case, they were free to answer if they considered so. Overall, 7 NCAs provided answers to the 2 questions of section 3.7.2.

G-SIIs), the diverging theoretical views by NCAs on what could be the *modus operandi* regarding the treatment of policyholders in the resolution of cross-border groups deserve to be discussed below.

- 3.224. Firstly, there is the question of whether there may exist potential different views or motivations within the CMG that could be explained by the intention of NCAs to protect their own policyholders. In general, most of the replies pointed out that the CMG was a useful platform for co-operation and/or seeking co-ordination of local resolution strategies, and currently no existing diverging views at the level of the CMG seemed to be attributable to NCAs just focusing on the protection of their own policyholders, particularly in "normal times".⁴⁸
- 3.225. Notwithstanding this, on the second question of whether the intention of NCAs to protect their own policyholders in cross-border cases could hinder the co-operation in crisis situations and lead to a deficient management, the views were essentially different. They suggested there could be potential conflicts of interests. For instance, a NCA stated that resolution is often perceived as a "prisoner's dilemma" (i.e. whether authorities have stronger incentives to co-operate or not to co-operate depending on the actual circumstances).
- 3.226. Other inefficiencies that may arise in a crisis situation, as cited by the NCAs, are the following:
- Incentives for cross-border co-operation could be contradictory if an entity is material in a particular jurisdiction, but not at the group level.
 - Ring-fencing of capital and limitation to capital transferability across the group.
 - NCAs would tend to focus on the protection of the policyholders in their own jurisdiction.
 - Having not a harmonised legal framework may encourage adopting national protective actions in a crisis situation.
 - The resolution strategy (single point of entry versus multiple point of entry) could also determine the level of co-operation in case of a crisis.
- 3.227. Given the feedback received, EIOPA considers that in crisis situations the risk that diverging interests occur across Member States remains, thereby potentially prioritising the protection of policyholders at a local level and hindering co-operation. These issues are so far still an ongoing concern for some CMGs and need to be further discussed. However, it was noted by some NCAs that the CMG could be a useful platform to discuss such topics further.

⁴⁸ As stated in EIOPA's Opinion, co-ordination and co-operation arrangements for the supervision of cross-border insurance groups are already arranged for in Solvency II, which requires NCAs to co-operate and co-ordinate with foreign NCAs through the establishment of College of Supervisors. The interaction between CMG's and College of Supervisors should be further considered.

How recovery and resolution plans, liquidity risk management plans, and systemic risk management plans have been used in practice by NCA

- 3.228. EIOPA gathered the views of the NCAs participating in the CMGs (in both roles, i.e. as group supervisors or solo supervisors) to ascertain to what extent the recovery and resolution plans are used in practice. Three of the four plans are undertakings' plans (the recovery plans, liquidity risk management plans, and systemic risk management plans); whereas the resolution plans are NCA-borne plans, in the sense that the production and drafting is done by the NCA.
- 3.229. Conceptually, it deserves to be mentioned that the use of the plans (in case of a crisis) is not exactly the same as using the plans (e.g. undertakings' plans) in "normal times", as an element of analysis feeding into the resolution planning process or through the supervisory loop.
- 3.230. Concerning the use of such plans in crises, no NCAs reported an actual use of the plans, due to the lack of a crisis situation throughout the last years.⁴⁹ However, NCAs provided useful insights on the use of the plans in "normal times" and to a lesser extent related issues concerning policyholder protection. The full details are summarised below:
- a) **Recovery Plans:** The Recovery Plans were regularly discussed by the CMGs, usually on a yearly basis, and in some cases feedback is given to the insurance group. Some NCAs mentioned that the Recovery Plans have been used in order to challenge the undertakings on the scenarios and range of recovery options available to them. No relevant issues were identified by NCAs in the Recovery Plans, which *a priori* could negatively affect the protection of policyholders.⁵⁰
 - b) **Resolution Plans:** In general, the resolution plans are discussed within the CMG during the drafting process in order to produce a more viable and sound plan. One NCA mentioned that the plan(s) will potentially be used with the aim of testing the resolution scenarios, in order to add operational detail and identify any weaknesses. Concerning policyholder protection issues, at least one NCA mentioned that in case of resolution it cannot be precluded that some policyholders will be negatively affected. Another NCA identified several impediments for resolution, that could hamper an orderly resolution of the group and hence potentially the protection of policyholders.
 - c) **Liquidity Risk Management Plans (LRMP).** The LRMPs are discussed at the CMGs and reviewed, usually on a yearly basis. Some NCAs reported that LRMPs are also used by the undertakings for their own liquidity planning. An NCA remarked that the LRMP has been particularly useful in assessing and challenging the undertakings on the robustness of their liquidity plans. No relevant policyholder protection issues were reported.

⁴⁹ Please note that the framework for G-SIIs has been applicable only since 2014.

⁵⁰ However, one NCA mentioned that in case of recovery it cannot be categorically discarded that at least one policyholder will be negatively affected.

d) Systemic Risk Management Plans (SRMP). The SRMPs are also discussed at the CMGs and reviewed. One NCA mentioned that based on the undertaking SRMP, specific actions were undertaken by the cross-border group to mitigate or reduce some systemic risk. Another NCA noted that the SRMP was used for the assessment of critical or, more broadly, important functions to be preserved in resolution as well as important shared services. The main objective seemed to be having a continuum of different plans (Recovery Plan, LRMP and SRMP and Resolution Plan). No policyholder protection issues were reported, given that these plans are more focused on the stability of the financial system.

3.231. These four preemptive plans also address relevant sources of systemic risks identified by EIOPA, thereby also contributing to the stability of the financial system as a whole.⁵¹

3.7.3 Reflections on Level of protection of policyholders and beneficiaries of the undertakings of the same group, particularly in crisis situations

3.232. There is a fragmented landscape with diverging national legislations and approaches with respect to recovery and resolution. As a result, different powers may not guarantee an equivalent level of protection of policyholders and beneficiaries of the same group involving undertakings in different Member States.

3.233. Given the feedback received on the Survey for this request, EIOPA considers that in crisis situations the risk that diverging interests occur across Member States remains, thereby potentially prioritizing the protection of policyholders at a local level, and hindering cross-border co-operation.

3.234. As stated in the Opinion on recovery and resolution⁵², EIOPA is of the view that there is a need for a minimum harmonised framework for the recovery and resolution of (re)insurers. This would facilitate cross-border management of insurance crises.

⁵¹ See EIOPA (2018): "[Other potential macroprudential tools and measures to enhance the current framework](#)"

⁵² EIOPA's Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for (re)insurers across the Member States, 2017.

3.8 Insurance Guarantee Schemes

3.8.1 COM's Request on Insurance Guarantee Schemes

In its Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for (re)insurers across their Member States, EIOPA provided some data on existing insurance guarantee schemes.

If new developments have occurred since July 2017, EIOPA is requested to provide updated information on:

- 3.8.1 existing national insurance guarantee schemes and the lines of business covered by them in each Member State;
- 3.8.2 where applicable, the way of funding of the insurance guarantee schemes in each Member State;
- 3.8.3 cases where insurance guarantee schemes have been effectively used, in the context of a group.

3.8.2 Findings on IGS and Other info requested by COM

Introduction

3.235. This section of the Report provides information on the existing national Insurance Guarantee Schemes (IGSs) in the Member States. The information is based on a survey that EIOPA conducted in the context of the "Discussion Paper on resolution funding and national insurance guarantee schemes" in the first quarter of 2018. For the purpose of this information request by the European Commission, the survey was updated with questions on the Motor Insurance Directive (MID) bodies. Additionally, NCAs were requested to update the previously submitted information where necessary.

3.236. The section covers two types of schemes, i.e. Insurance Guarantee Schemes and Motor Insurance Directive (MID) bodies:

- In accordance with the Discussion Paper on Resolution Funding and National Insurance Guarantee Schemes,⁵³ the following definition is adopted for IGSs: *"IGSs provide protection to [policyholders] when insurers are unable to fulfil their contractual commitments [...] either by paying compensation to policyholders for their claims, or by securing the continuation of their insurance contract"* (European Commission, 2010).
- With respect to the MID bodies, Member States are required to *"set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an **unidentified vehicle** or a vehicle for which **the insurance obligation** provided for in [this Directive] **has not been***

⁵³ This section is based on EIOPA's "[Discussion Paper on resolution funding and national insurance guarantee schemes](#)" (July 2018). The information contained in this document has been updated where needed.

satisfied” (Motor Insurance Directive, MID, Directive 2009/103/EC, Article 10).

IGS - Insurance Guarantee Schemes

a) IGS General overview

3.237. The Table in Annex V entitled “Overview of existing MID schemes and national IGSs” is split in two parts, i.e. Part A (MID) and Part B (IGS). Starting with Part B, it can be seen that there are currently 26 IGSs (or schemes that are similar to or fulfil the tasks of IGSs) established in 20 Member States.

3.238. It should be noted that to this part of the table, which refers to IGS, the following applies:

- Schemes covering exclusively motor third party liabilities (MTPL) under circumstances set out in Article 10 are excluded (see Part A – Annex V);
- Schemes covering exclusively MTPL under circumstances and can pay compensation for damages to property or personal injuries in the event that the insurer bound to pay the damages is insolvent are excluded;
- Schemes that cover MTPL and other insurance liabilities are included;
- Schemes that exclusively cover MTPL in the event of liquidation of an insurer but not in the event laid down in Article 10 are included.

3.239. In a majority of the Member States, the establishment of an IGS was prompted by the failure of insurers or general distress in the insurance market. A few NCAs explained that the schemes were created in order to strengthen the confidence in insurers, while some others mentioned that the scope of the mandatory bodies for MTPL was extended to cover other lines of (compulsory) non-life insurance.

b) IGS Lines of business covered

3.240. The table in Annex V (Part B) also shows the lines of business covered by each of the schemes listed. As can be seen from the table, the coverage of the existing IGSs differs substantially across Member States.

3.241. There are schemes covering life, non-life or both life and non-life insurance. Within each of these categories, there are also differences in the lines of business covered. As can be seen in the table, some schemes cover a very broad range of lines, whereas others cover only a selected number of lines.

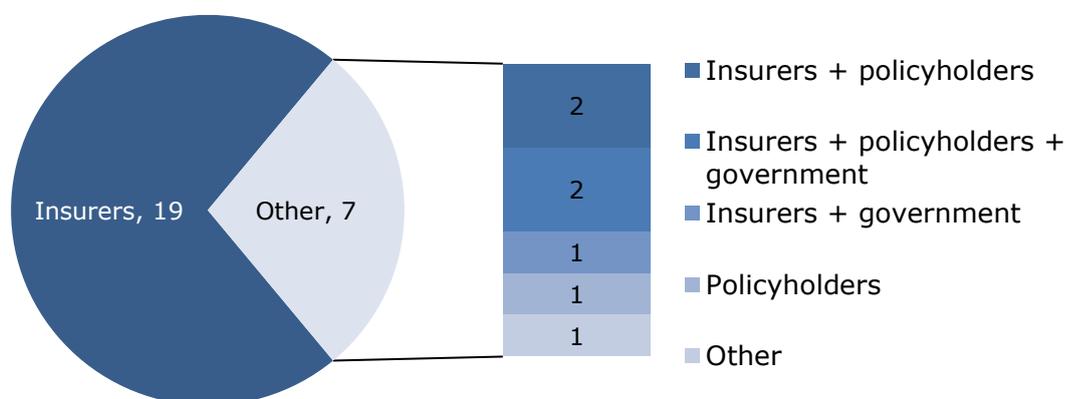
c) IGS Funding

Contributors

3.242. Most of the IGSs are predominantly funded by contributions from insurers as shown in Figure 1. When funding by policyholders is referred to in some cases this is based on the provisions in the law which allows for the insurance premiums to be increased with the contribution levels while in other cases, the NCAs clarified that in practice the levies on insurers are passed on to policyholders. One NCA mentioned that an integral part of the funding structure of the IGS is that the government can issue loans to the IGS in order to allow that payments to policyholders are made without delay. The loans are paid back in due course through the industry contributions to the IGS. Another NCA reported that the IGS is able to take loans guaranteed by the government in case of shortfalls. In summary, public money is usually used as a way to speed up the payment to policyholders or on a subsidiarity basis, in case the IGSs does not have enough funds. In both cases, public funds seem to be recovered afterwards.

3.243. Other sources of funding not shown in the figure include: the issuance of certificates of association, loans, investment returns and amounts received from the property of the insolvent insurer.

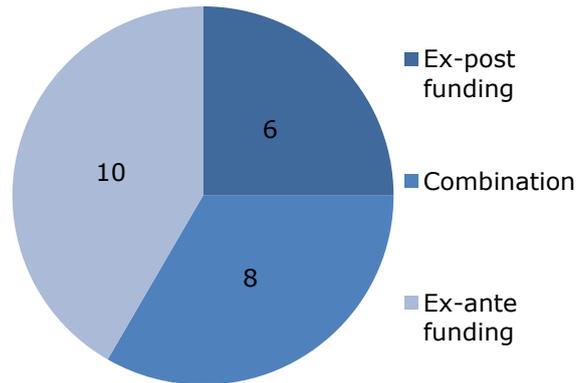
Figure 1: Contributors



3.244. Another important aspect of the funding is the timing. In an ex-ante funded IGS, the funds are raised before the occurrence of a failure which means that the funds need to be managed by the IGS until a failure happens. In an ex-post funded IGS, the funds are only raised after the occurrence of a failure, i.e. the costs of failure are funded by money collected after the failure has occurred. It should be noted that ex-ante financing does not preclude ex-post contributions to complement financing needs after an intervention.

3.245. Figure 2 shows the timing of the funding of the existing IGSs. All alternatives are captured by the IGSs. There are schemes funded on an ex-ante basis, ex-post basis or on the basis of ex-ante funding complemented with ex-post funding.

Figure 2: Timing of funding



3.246. It should be noted that different parties can contribute to a scheme that operates on an ex-ante basis, ex-post basis or a combination of both.

3.247. Figures 3 and 4 illustrate the bases for the contributions from the industry to the IGSs. A majority of the schemes use the (gross or net) TPs as a basis to calculate the contributions, followed by the (gross or net) written premiums. A small number of IGSs use another basis for the calculation of contributions, such as gross earned premiums.

3.248. Figure 4 reveals that these contributions are based on a fixed rate or percentage. Only in one case it was reported that the contributions are risk-weighted, i.e. the contributions are calculated according to the risks of the insurers. The respective NCA explained that the contributions amount to a certain percentage of the net technical provisions (recognised in the previous year) multiplied by an individual risk factor which is determined based on the risk measures in accordance with the relevant legislations.

Figure 3: Calculation base

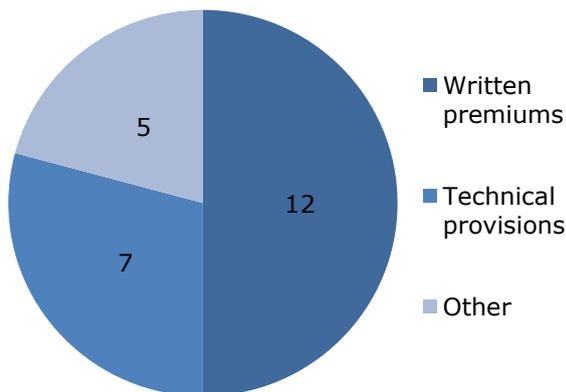
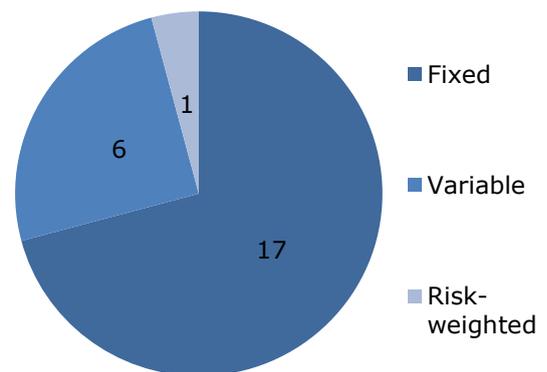
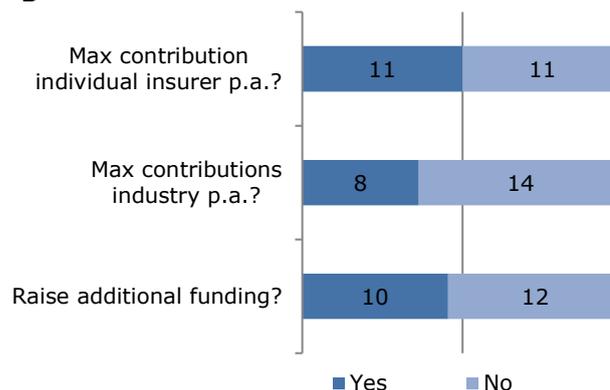


Figure 4: Contribution base



3.249. Finally, Figure 5 gives some other relevant information about the funding structure of the existing IGSs. The Figure makes clear that some schemes have upper limits on the annual level of contribution that can be raised from an individual insurer or from the industry as a whole. Additionally, 10 IGSs are equipped with the power to raise additional funding in case of shortfalls. Examples of ways to raise additional funding include: issuance of debt securities, payment of advance annual contributions by the insurers, increase of the amount of the annual contribution.

Figure 5: Other information



Minimum level of funding

3.250. In the survey NCAs were also asked whether the IGS is required to maintain a minimum level of funding. The responses showed that 5 schemes need to have a minimum level of capital which in some cases is defined as an absolute number laid down in the legislation or the level of capital required fulfilling its tasks.

3.251. One NCA mentioned that the IGS is not required to maintain a minimum level of capital, but in case of resolution it may become the shareholder of the bridge institution and, hence, needs to comply with the capital requirements set out for bridge institutions.

Motor Insurance Schemes in the EU

a) General overview

3.252. As stressed before, the Motor Insurance Directive (MID, Directive 2009/103/EC, Article 10) requires Member States to:
*“set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an **unidentified vehicle** or a vehicle for which **the insurance obligation** provided for in [this Directive] **has not been satisfied**”.*

3.253. Column belonging to Part A of the table “Overview of Existing MID schemes and national IGSs” in Annex V lists the names of the bodies established in each Member State in the context of this Directive.

b) Lines of business covered

3.254. As required by the Directive, these schemes cover MTPL insurance. However, as can be seen from Part B, the scope of some schemes have been extended to cover other lines of business as well (such as other compulsory non-life insurance lines of business). This explains why they were included as IGSs, in line with the definition provided.

c) Funding

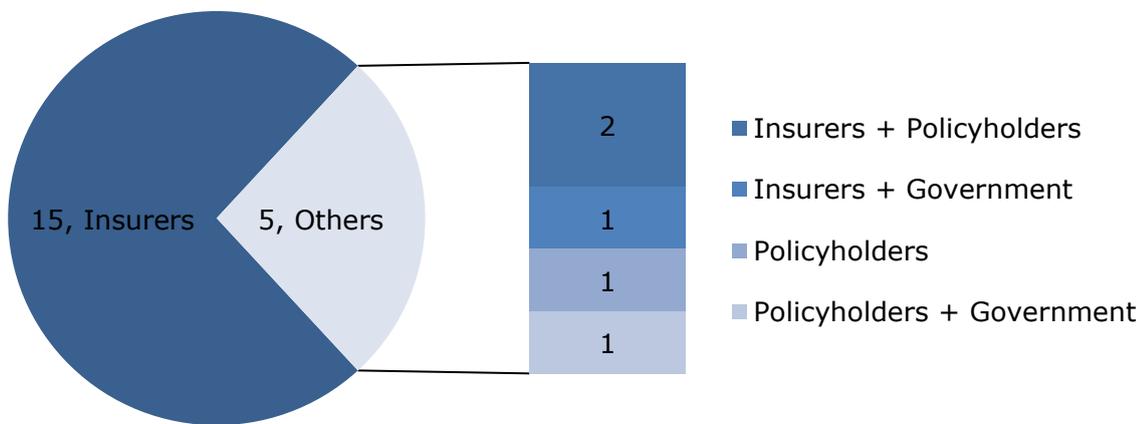
Contributors

3.255. Figure 6 shows the distribution of the contributors to the schemes. It should be noted that the schemes already included in the figures on the national IGSs above are not shown here.

3.256. As can be seen from the figure, most of the MID schemes are funded by the insurers. In some cases, a levy or tax is also posed on policyholders or vehicle holders. One NCA clarified that the insurers contribute to the funding for claims in proportion to their market share.

3.257. Another NCA explained that the fund determines the exact amount for each insurer based on the size and the nature of their activities. In this Member State, the government also makes a contribution to the scheme, although the scheme is largely funded by the industry. In the other Member State where the government might contribute to the scheme, it was explained that this only happens when there is a shortfall.

Figure 6: Contributors



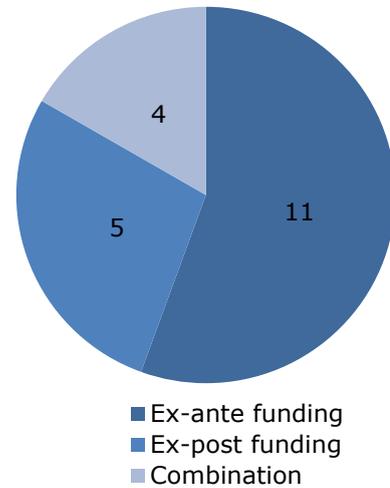
Timing of funding

3.258. Figure 7 shows the timing of the funding of the MID schemes. As shown, a majority of the schemes are funded on an ex-ante basis.

Figure 7: Timing of funding

3.259. In the context of MID schemes, funding on ex-ante basis should be understood as funding on an ongoing basis (e.g. via regular contributions or levies).

3.260. A smaller number of NCAs reported that the schemes are funded ex-post or both on an ex-ante and ex-post basis. One NCA clarified that a combination is used to ensure that in case of a shortfall additional funding can be requested.



Cases where insurance guarantee schemes have been effectively⁵⁴ used in the context of a group

3.261. EIOPA gathered feedback from NCAs on the issue of usage of insurance guarantee schemes in the context of groups, as depicted below. It was decided to set the cut-off date in 2008 in order to cover a period of 10 years.

Are there any cases where Insurance Guarantee Schemes (IGSs) have been used in the context of a group since 2008?

	Answers	Ratio
Yes	3	10.7%
No	25	89.3%
No Answer	0	0.0%

3.262. EIOPA notes from the responses received that, since 2008, 4 cases of actual use of insurance guarantee schemes were reported in the context of a group by 3 different Member States. There were different types of IGSs used in these 4 cases, involving different schemes covering: (i) motor third party liability claims, (ii) life coverages or (iii) non-life claims.

3.263. No sufficient data is available for EIOPA to ascertain whether the use of the IGS was effective in a conclusive manner. With the exception of one case, the involved NCAs did not provide a definitive answer on this, primarily because some of the claimants are still in the process of being compensated.

⁵⁴ The term "effectively" was not defined and is therefore subject to expert judgement by NCAs.

3.8.3 Reflections on Insurance Guarantee Schemes, including Motor Insurance Schemes

3.264. This section is based on EIOPA's "Discussion Paper on resolution funding and national insurance guarantee schemes" (July 2018).

3.265. All EU countries have set up or authorised a body with the task of providing compensation in line with Art. 10 of the MID (Directive 2009/103/EC). There are, however, certain differences in terms of the funding of such bodies.

3.266. When it comes to IGSs (as defined in this document), the situation is far more fragmented with some countries having more than one IGS, while others have no IGS at all. There are also substantial differences with respect to the lines of business covered and their funding.

3.267. EIOPA is of the view that a minimum degree of harmonisation in the field of IGS would benefit policyholders, the insurance market and more broadly contribute to financial stability in the EU, also considering the need to have a harmonised recovery and resolution framework in place. A harmonised approach should take into account the existing national schemes.

3.9 Scope of Group Supervision

3.9.1 COM's Request on Scope of Group Supervision

COM's Request:

EIOPA is asked to provide, *inter alia*, information on:

- 3.9.1 any uncertainties or supervisory divergences in the distinction between insurance holding companies and mixed-activity insurance holding companies as defined in Article 212 (1) (g) and (h), and the impact of any divergent practices;
- 3.9.2 the number of cases of application of Article 214 (2), (a), (b) and (c), and an analysis of such cases, in particular when it concerns insurance and reinsurance undertakings which are not headquartered in the same country as the ultimate parent undertaking, and when the application of those articles results in waiving group supervision or waiving the establishment of a college of supervisors;
- 3.9.3 the number of cases of application of Article 213 (5) or (6), and an analysis of the uncertainties related to the assessment of the "equivalence" of the Provisions of Directives 2009/138/EC, 2002/87/EC and 2006/48/EC;
- 3.9.4 the number of cases of application of Article 217 of Directive 2009/138/EC, and a description of uncertainties related to the application of this article.

3.9.2 Findings on Scope of Group Supervision

3.268. In most cases the definition of a 'group' in Article 212(1)c of the Solvency II Directive works fine with a few exemptions that need attention:

a. Individual undertakings "acting in concert"⁵⁵

Where individual insurance undertakings are "acting in concert" as a horizontal group, a centralized coordination/dominant influence as required under Article 212 (1) (c) of the Solvency II Directive can be difficult to prove as reported to COM last year to its request on Article 242(1) of the Directive. At least one NCA indicated the importance for the term "centralised coordination" to be clarified. It is also noted that one NCA investigated with on-site inspections:

- the System of Governance of the insurance undertakings and related undertakings,
- Financial links, common investment of assets,
- Personal links among key function holders and board members of the insurance companies,
- Submitted requests for granting authorisations (portfolio transfers, mergers) of the insurance companies and related undertakings.

⁵⁵ The notion of acting in concert seems to be introduced by the 88/627/EEC Directive, Article 7 ("concerted exercise of the voting rights they hold"). The term acting in concert is used in here in a different way as to reflect the case presented by the NCA for the purpose of this report. EIOPA understands that this term can be used or translated differently by other Member States.

The NCA last year qualified the horizontal group as an insurance group under Article 212 of the Solvency II Directive and requested group reporting.

The group started court proceedings against the decision and the reporting obligations to the NCA at group level are suspended as reported in EIOPA's letter to the EU Commission of 4 April 2018.

The notion of "acting in concert" is something that could be explored to see if referring to such notion would strengthen the definition of "group" under Article 212(1)(c) of the Solvency II Directive, as long as it has no other unintended consequences.

b. Third country groups with multiple entry point in the EEA

The second case is of third country groups operating in the EEA through multiple entry points rather than using a holding company for their operations in the European market. As NCA's are mainly focused on the operations of the subsidiary insurance undertaking they supervise, it is quite difficult to be aware of other subsidiaries operating under the same third country holding on the basis of which interconnectedness might trigger group supervision. A further practical complication is how to decide which of these authorities meets the criteria in Article 247(2)(b)(v) of the Solvency II Directive.

c. EEA supervised insurance undertakings with the same ultimate third country parent

The third case relates to non-EEA structures with related investment funds investing in several otherwise unconnected insurance undertakings across the EEA. Those structures cannot be effectively subject to Solvency II group supervision and EEA supervisors are reliant on non-EEA supervisory authorities to provide information on the construction and ownership of the structure. EIOPA currently runs 1 proto colleges focusing on information exchange and assessment of potential risks stemming from activities and uncertainties on the strategy of the ultimate parent. EIOPA also started a co-operation between the EEA supervisors concerned and the non-EEA supervisor of the ultimate parent. (see paragraph 3.299 at the end of this section)

The application of Article 212(1)(f) and (g) of the Solvency II Directive is not consistent across Member States leading to potential competitive disadvantages for those groups whose top holding has been identified as an Insurance Holding Company against those groups whose top holding has been identified as a Mixed Activity Insurance Holding Company (MAIHC). If an insurance holding company (IHC) is identified, the group would apply full group supervision including capital requirements, governance and reporting. If a MAIHC is identified only the IGT are reported, leading to a un-level playing field compared to a IHC. A top holding qualified as IHC with for example 60% ownership has still to hold capital as if there is a 100% ownership.

- 3.269. To qualify as an IHC in Article 212(1) (f) of the Solvency II Directive, the participating (holding) undertaking should have as its main business to hold participations in insurance undertakings. Only one NCA, from the 8 that answered about their experiences with the application of these articles, reported that it therefore only looks at the number of insurance subsidiaries of this holding.
- 3.270. One NCA states that the wording “exclusively or mainly” in Article 212 (1)(f) of the Solvency II Directive gives a room for interpretation in the sense that it is necessary to look not only into the number of subsidiaries but also into the weight of the entities in the group. Six other NCA’s reported as well that they do not only look into the number of insurance undertakings as subsidiaries but also into the balance sheet of the holding company to see if the major part of the assets on the balance sheet of the holding derives from the insurance business. The total of the balance sheets of the insurance undertakings in the group are in that case compared with the total of the balance sheet of the group.
- 3.271. In EIOPA’s opinion, the approach to compare the balance sheets of the insurance undertakings in the group with the total balance sheet of the group is to be preferred. If the insurance business is the dominant business of the group the holding would have to apply full group supervision. Additionally NCAs may, in specific cases, consider replacing the criterion based on the balance sheet total with one or both of the following parameters or add one or both of these parameters, if they are of the opinion that these parameters are of particular relevance for the purposes of group supervision under Solvency II such as income structure or off-balance-sheet activities.
- 3.272. It is also noted by EIOPA that the responsibility put on the holdings depends on the national law. If the local law does not allow the NCA to treat the holding as an insurance undertaking, the supervisor can only make use of the measures available. This at the level of the holding is limited to direct sanctions towards the persons managing the holding companies, and, at the level of the (re)insurance undertakings it may include if foreseen in the law and not limited to: (i) measures aimed at reducing the risk profile such as restriction of the operations and prohibiting temporarily or permanently the insurance and/or reinsurance activity, partially or wholly, for one or more classes of insurance; (ii) measures aimed at limiting or preventing a reduction of financial resources such as prohibiting free disposition of assets or prohibiting the free allocation of assets from the MS; (iii) suspension of dividends distribution; (iv) withdrawal of authorization.

Exclusion from Group Scope and/or Group Supervision

- 3.273. Several reasons were mentioned for not including a company in the scope of group supervision on the basis of Article 214 (2) of the Solvency II Directive; mostly the size of the excluded company is mentioned (Article 214 (2) (b)). Several other NCA’s reported they exclude several subsidiaries from group supervision because of their

size and/or the fact that it is "only a national group". It is unclear based on the information available to EIOPA if there is a consistent application across Members of Article 214 (2) (b) of the Solvency II Directive. Moreover, it is noted that not applying group supervision might lead to competitive advantages towards international groups active on the same market. Since there is no consultation procedure with other NCA's in the case of national groups, consistent application cannot be assured.

- 3.274. In several cases subsidiaries and participation in joint ventures in a third country are excluded from group supervision due to inadequate access to information (Article 214 (2) (a) of the Solvency II Directive). In these cases, the value of the participation is set to zero for the calculation of group solvency as the solvency regulation was deemed not to be equivalent to Solvency II.
- 3.275. One NCA reported to be in discussion with a group who according to their opinion qualifies as an insurance group whereas the group argues they are not. This NCA would welcome more clear criteria of "exclusively or mainly insurance undertakings" in Article 212 (1) (f) Solvency II Directive.
- 3.276. Several cases of exclusion of the top holding in the EEA were reported, as the NCA qualified the holding as of negligible interest for group supervision under Article 214 (2) (b) of the Solvency II Directive. In many of these cases the holding excluded from supervision was a stock company holding the majority of the shares of a former mutual company. In all these cases the result was a change in the level of group supervision to a sub-holding in the group structure and not the total absence of group supervision.
- 3.277. In one case such a "stocks holding" company, who was under supervision approached EIOPA and stated that since it was holding an average of 60% of the shares and group solvency was based on 100% ownership, this led to an extra capital requirement of several €100mn. After the holding reduced its influence on the group, the NCA agreed to exclude the holding from group supervision and supervise the group from the sub-holding. The excluded holding was, however, kept under supervision on the basis of Article 214 (1) of the Solvency II Directive. EIOPA is aware of at least 1 other "stocks holding" company, which is not part of group supervision but comes still under holding supervision under Article 214 (1).
- 3.278. In another case, the group is a national group of former mutuals. An ultimate parent undertaking of the group has a participation (by owning guarantee shares) in an undertaking otherwise not belonging to the common distribution/products/marketing structure of these mutuals. The contractual relationship is loose and this ultimate parent did not have dominant influence on the undertaking. It therefore was decided not to include the holding in the scope of group supervision of that particular group. This decision did not have any college influence due to the group being domestic.
- 3.279. EIOPA Q&A 485 states that excluding the top holding/ultimate parent undertaking from group supervision should preferably never

lead to the absence of group supervision. Q&A 485 also states the major shareholder holding can never be excluded from group supervision as it is of vital importance to the group. This principle has been followed by several but not all supervisors. In one case, the group with a holding company as the ultimate parent, is totally excluded from supervision. In other cases the NCA decided to exclude the "stock holding" company from the scope of group supervision, but still kept the group under supervision and also demanded the intra-group transactions to be reported.

- 3.280. Article 214 (2) (c) of the Solvency II Directive has been applied by one NCA and resulted in a waiver from supervision of the respective companies. However, group supervision and FICOD supervision applies. The ultimate parent is in the same country as the NCA.
- 3.281. Article 214 of the Solvency II Directive states that "the exercise of group supervision in accordance with Article 213 shall not imply that supervisory authorities are required to play a supervisory role in relation to the third country insurance undertaking, (...) the insurance holding company, the mixed financial holding company, mixed activity holding company (...)".
- 3.282. Some NCAs have stated that this leads to an absence of a legal basis for supervisory measures against the holding company, except in the case of the fit and proper requirements set out in Article 257 of the Solvency II Directive. For example, in the case where the group SCR includes the (mixed financial) holding's participation in other (non-insurance) companies and the valuation of these participations is considered inadequate, no measures can be taken against the group. Another example is that, when the governance and control at group level required under Article 246 of the Solvency II Directive is poor, no supervisory measures can be taken directly against the holding company.
- 3.283. In some countries there is a situation that the European holding is part of group solvency calculations but the holding is not responsible for delivering the figures, nor the calculation (delivered by the solo). Hence, supervisory measures against the holding cannot be taken, which seriously hinders effective supervision.

Application of Article 213 (4) or (5) of the Solvency II Directive

- 3.284. EIOPA is not aware of cases where the group supervisors apply only the relevant provisions of Directive 2002/87/EC to a mixed financial holding company that is subject to equivalent provisions under Solvency II rules and under FICOD rules (Directive 2002/87/EC).
- 3.285. However, in one Member State one mixed financial holding company applied for a total waiver of Solvency II group rules, requesting the application of FICOD rules only, in accordance with Article 213 (4). That application was refused by the group supervisor and confirmed by the Administrative Court.

- 3.286. In another Member State with integrated supervision there were 3 cases of requesting application of Article 213 (5). In all cases no co-operation issues were identified and it was determined that the insurance activities were the predominant activities of the group. Hence, application of Solvency II group supervision was most appropriate.
- 3.287. Difficulties in understanding how the equivalence assessment of the provisions of Directives 2009/138/EC, 2002/87/EC and 2013/36/EU should be performed, are raised by some Member States, emphasizing the need for further guidance in case of such an assessment of equivalence as guidelines and regulatory technical standards envisaged in Article 213(6) are still not developed.

Application of Article 217 of the Solvency II Directive

- 3.288. EIOPA has not identified any case of application of Article 217 on the agreement between supervisory authorities carrying out group supervision at the level of a subgroup covering several Member States.

(Re)insurance undertaking whose ultimate parent is outside the EEA. Application of Article 262 of the Solvency II Directive

- 3.289. Around 200 insurance groups with the top holding outside the EEA (both equivalent and non-equivalent) are supervised by EEA supervisors.
- 3.290. Specific challenges reported are to get adequate insight in the group structure, the calculation of group solvency including the non-EEA activities and the practical use of "other methods" for groups with holdings in non-equivalent third countries. Furthermore, the exchange of confidential information with the third country supervisor is reported as a challenge and diminishes the effectiveness of a regular engagement with the third country supervisors, as long as there is no MMoU in place. Negotiations for an MMoU are very time consuming.
- 3.291. One NCA stated that it requested the EEA sub-holding or subsidiary to provide data on the non-EEA part of the group for group supervision purposes.
- 3.292. One NCA states either requiring an EEA sub-holding to be set up at EEA level or excluding the non EEA part of supervision is the best solution under "other methods", for supervision outside the EU of insurance activities in non-equivalent third countries.
- 3.293. Several NCAs report no sub-holding in the EEA is required in case the third country is equivalent and good co-operation is assured, preferable accompanied by an effective college set up by the non-EEA group supervisor.
- 3.294. Many NCAs report that the supervision of an insurer or insurance group with a third country top parent works best if the third country

sets up a college structure supported by a clear co-operation agreement for the exchange of confidential information. In several cases an EEA sub-holding company was already established for an insurer with a parent in an equivalent country and it still comes under full supervision.

- 3.295. EIOPA understands that the NCAs have notified the Commission on the methods chosen according to the requirement set by Article 262 of the Solvency II Directive. Based on the answers provided by NCAs to the survey, it is noted that at least two NCAs have notified other methods.
- 3.296. One NCA reports that if the third country top holding is a MAIHC based in an equivalent third country, then only intra-group transactions are requested for reporting purposes.
- 3.297. Where the ultimate parent is based in a non-equivalent third country, one NCA decided not to apply Article 262 and did not apply group supervision at the level of the ultimate parent, as it was judged disproportionate (the concerned entities are isolated) and difficult to apply (extraterritoriality issues). More generally it should be stated that NCA considers that imposing Solvency II group supervision by default to a parent undertaking outside of the EU should not be the default solution. Instead, the NCA considers the only applicable provisions in Article 262 is the possibility for NCAs to impose the creation of a EU holding company in order to apply a proper Solvency II group supervision at the EU level.
- 3.298. Some NCAs indicated that the last paragraph of the Article 262 of the Solvency II Directive: "The methods chosen shall allow the objectives of the group supervision as defined in this Title to be achieved" can substantially limit the choice of methods available. Therefore, it is not practical for group supervisors. Some NCAs indicated that consideration may be given to a more "prescriptive" choice of methods. While other NCAs indicated that the current wording allows them to apply enough supervisory judgment to make a choice that suits the nature, scale and complexity of the operations of the groups falling under the scope of this Article.
- 3.299. There are several insurance undertakings licenced in different EEA Member States who are owned by the same or by several related undertakings located in third countries. In these cases it was not possible to use Article 247(2) of the Solvency II Directive to identify a group supervisor. The NCA's need to rely on the third country parent company for information. Two proto colleges were set up⁵⁶ with all concerned NCA's to exchange information and assess potential risks stemming from the activities and uncertainties on the strategy of the ultimate parent. Co-operation takes place on a voluntary basis and EIOPA also sets up co-operation with the third country supervisor of the ultimate parent. A formalisation of proto colleges and the necessary information exchange between its members as well as the role of EIOPA would support the

⁵⁶ Two proto colleges were set up in 12/2015. However, one proto college is only currently operating.

effectiveness of the supervisory cooperation across the proto college.⁵⁷

3.9.3 Reflections on Scope of Group Supervision

3.300. EIOPA notes that the definition of a group (Article 212(1)(c)) of the Solvency II Directive works fine with a few exceptions that need attention: (a) individual undertakings “acting in concert”; (b) third country groups with multiple entry point in the EEA; (c) EEA supervised insurance undertakings with the same ultimate third country parent. Horizontal groups, third country investors owning several insurance companies and groups in the EEA are hard to be brought under the definition of a “group” under Article 212(1)(c) because a “centralised co-ordination” can be difficult to prove at times. The term centralised coordination needs further clarification.

3.301. EIOPA also notes the issues concerning the definition of holding companies (IHC, MAIHC) is a recurrent topic noted by the NCAs. There is no consistency on the application of Article 212(1)(f) and (g) of the Solvency II Directive leading to supervisory convergence matters as well as potentially created competitive (dis)advantages for certain groups depending on the interpretation of the Directive by the group supervisor and/or national transposition issues.

3.302. EIOPA has also noted that there may be different supervisory approaches regarding the exclusion of a company from the scope of the group supervision. Supervisors indicate the analysis is carried out on a case-by-case basis but there may not be full consistency on the application across Member States, e.g. a group supervisor from a different Member State could possibly come to a different conclusion due to how the supervisory processes and supervisory judgment is applied. For instance, it is noted that there were several cases of exclusion of the top holding in the EEA were reported, as the NCA qualified the holding of negligible interest for the group supervision.

The term “negligible interest” of Article 214 (2) (b) of the Directive needs further guidance through supervisory convergence tools. In numerous cases small solo entities are exempted from supervision, especially in the case of small subsidiaries of national groups, where the exclusion of undertakings from supervision does not have to be consulted with other supervisors.

3.303. Another risk of non-convergence, are the cases where holding companies at the top of the group are exempted from the scope of the group and instead the group solvency is applied at the next level. This leads to substantial capital relief for the group SCR which is then calculated at sub-holding level in those cases where the top holding is not the 100% owner of the group. The criterion for exemption of the

⁵⁷ A formalization of proto colleges would require EIOPA having dedicated resources.

scope of supervision is something that could be further clarified and developed. A convergent application of Article 214(2)(b) of the Solvency II Directive could be better assured by a process in which EIOPA is consulted before the final decision for exemptions are taken by the NCA.

3.304. EIOPA notes that some Member States have created additional regulation to close any of the above mentioned gaps. Therefore, such Member States indicated that they have no identified issues with the scope of the group supervision. Nonetheless, in absence of such additional national regulations those jurisdictions would have encountered the same challenges as faced by other group supervisors.

3.305. Further guidance in case of the equivalence assessment of the provisions of Directives 2009/138/EC, 2002/87/EC and 2013/36/EU is needed as guidelines and regulatory technical standards envisaged in Article 213(6) of the Solvency II Directive are still not fully developed.

3.306. There are several insurance undertakings licenced in different EEA Member States who are owned by the same or by several related undertakings located in third countries. In these cases it was not possible to use Article 247(2)(v) of the Solvency II Directive to identify a group supervisor. The NCA's need to rely on the third country parent company for information. Two proto colleges were set up with all concerned NCAs to exchange information and assess potential risks stemming from the activities and uncertainties on the strategy of the ultimate parent. Co-operation takes place on a voluntary basis and EIOPA also set up co-operation with the third country supervisor of the ultimate parent. A formalisation of proto colleges and the necessary information exchange between its members as well as the role of EIOPA could support the effectiveness of the proto college.⁵⁸

⁵⁸ A formalization of proto colleges would require EIOPA having dedicated resources.

3.10 Group Solvency calculation and group supervision

3.10.1 COM's Request on Group Solvency Calculation and Group Supervision

COM's Request:

EIOPA is asked to provide, *inter alia*, information on:

- 3.10.1 uncertainties or divergences of practices in group solvency calculations and supervision between national jurisdictions when using method 1, method 2, or a combination of methods, including cases of third-country insurance and reinsurance undertakings in the scope of group supervision, and the impact of any divergent practices;
- 3.10.2 uncertainties or divergences of supervisory practices on group solvency calculation where undertakings from other financial sectors as referred to in Article 335 (1) (e) of the Delegated Regulation (EU) 2015/35 belong to the scope of group supervision in accordance with Article 213 of Directive 2009/138/EC, and the impact of any divergent practices;
- 3.10.3 cases of application of Article 228 of Directive 2009/138/EC, divergences in supervisory practices and their impact, and issues related to the application of this article;
- 3.10.4 how group supervisors take into account at group level, according to Article 242 of Directive 2009/138/EC, the capital add-ons imposed at the level of a solo related undertaking;
- 3.10.5 the application *mutatis mutandis* of provisions applicable at solo level, as referred to in Articles 230, 232, 233(6), 243, 246(1), 254(2), 256, 257 and 308b(17) of Directive 2009/138/EC, and, where applicable, the uncertainties or divergences of supervisory practices related to those provisions;
- 3.10.6 uncertainties or divergences of supervisory practices in the supervision of group solvency for insurance and reinsurance undertakings that are subsidiaries of an ultimate or intermediate insurance holding company or mixed financial holding company, as provided in Article 236 of Directive 2009/138/EC.

3.10.2 Findings on Group Solvency Calculation and Group Supervision

Methods to calculate group solvency

3.307. The difficulties and challenges under Method 1 are among others:

- Issues regarding interpretation of the relevant regulations for groups
- Issues regarding the inclusion of related non-regulated undertakings, including intermediate IHCs and MFHCs
- Issues with determination of consolidated data.
- Practical issues when dealing with third countries (both equivalent and non-equivalent)

3.308. NCAs indicated a clear challenge regarding the data used to calculate group solvency. For instance, they cannot always check whether the consolidation has been properly done by the participating undertaking as the consolidated accounts are not always audited. In addition, IHC, MFHC

or insurance undertakings are not required to submit the consolidated accounts to the NCA. In case undertakings from other financial sectors are included in the group solvency calculation, it is not always possible to check whether the solvency calculation according to the sectoral rules is correct.

3.309. Other challenges may come from the fact that the regulation is not clear on how the consolidated data is determined, under Method 1. For instance, how the participations in specific related undertakings are valued in the group balance sheet, including the undertakings belonging to the other financial sector or from third countries.

3.310. More generally, there are cases where imposing Solvency II calculations to non-equivalent third countries' insurance undertakings (subsidiaries) is operationally burdensome and Article 214 is not applicable. Indeed, the concerned entities cannot be considered as negligible or there are no legal barriers to the transfer of information, or the inclusion of the concerned entities is not inappropriate or misleading with respect to the objectives of group supervision. Some groups are applying simplifications such as the use of the deduction and aggregation with proxies for the calculation of solo Solvency II figures with the permission of the NCA. There are divergent views among NCAs if such simplifications, that are not fully consistent with the Solvency II rules, can be acceptable as an application of the proportionality principle.

3.311. EIOPA notes the challenges of applying Article 229 of the Solvency II Directive. It is noted that in most cases the book value of the participations in third country insurance undertakings in the scope of group supervision are deducted from the group own funds due to the non-availability of the information necessary for calculating the group solvency, according to Article 229 of the Directive. This is a practical solution discussed with national experts. However, it is noted that in some jurisdictions a different approach for the group is used.

3.312. Regarding group solvency calculation in the context of equivalence, an EIOPA Opinion was issued in 2015 dealing with the solvency calculation of a (re)insurance undertaking, an insurance holding company or a mixed financial holding company which is a participating undertaking in a third country (re)insurance undertaking. This Opinion provided some guidance on:

- Third country capital requirements to be taken into account in the group solvency calculation.
- Considerations in the assessment of the availability of eligible own funds at group level.
- Examples in the capital requirements to be used for US subsidiaries of EEA groups.

3.313. The difficulties and challenges under a combination of Method 1 and Method 2 are among others:

- The Solvency II framework examines separately Method 1 and Method 2. The regulation does not provide rules or guidance on a

combination of the methods, which leads to difficulties on the consistency of application for cases where a combination of methods is used.

- To acquire a good understanding of the capital framework of an equivalent jurisdiction in the case of using a combination of Method 1 and Method 2. Especially, when it comes to the EIOPA stress test, a proper translation of the prescribed stress scenario and a good understanding of the outcome is complicated.
- Most queries received through the EIOPA Q&A tool refer to the determination of consolidated data for the purpose of calculating the group SCR and how the different type of related undertakings are brought into it.
- Also, there are issues with the understanding and adequate application of combination of methods, and in particular the treatment of participations when calculating certain risk modules. For instance, there is currently no clarity if the lines corresponding to the ownership of the participation should be excluded from the Solvency II consolidated data (Article 335 of the Delegated Regulation) but still to be included in the group balance sheet. The treatment is currently under discussion between NCAs.
- Issues with regard to the determination of eligible own funds can appear in case of substantial business activity in equivalent jurisdictions with permission to use Method 2 (D&A) for these undertakings. For example, when the Group organize their funding through a central holding company, the amount of subordinated debt (tier 2 capital) issued by the holding company will be a function of the overall group capital position. By making a distinction between EEA capital and the capital in jurisdictions that have been declared equivalent, the capital position in EEA could in this case be misrepresented by the combination of tier 2 capital crowding out (unrestricted) tier 1 capital in the EEA-area and the existing tiering restrictions. This issue could be overcome by applying the possibility outlined in EIOPA's Opinion issued in 2016 on the application of a combination of methods to the group solvency calculation offers.

3.314. The case of groups having multiple subsidiaries that are integrated with Method 2 is noted. Article 233 of the Solvency II Directive is not ambiguous as to that solo Own Funds should be aggregated and solo SCRs should be deducted, i.e. Method 2 is applied on an entity-by-entity basis and not to sub-groups. This was also confirmed by the answer to Q&A 1401 published in July 2018. It is noted that Article 233 could be more explicit in stating that when other methods are applied (Method 2, and Combination of Methods), the calculation of the group solvency applies to related undertakings only on an "entity-by-entity" basis and not to sub-groups.

Other Financial Sectors – Capital Requirements and Own Funds

- 3.315. In the group solvency calculation under Solvency II, capital requirements and own funds, are reliant on the sectoral rules on solo basis for other financial sectors. In general, entities which are subject to sectoral rules are included in the insurance group solvency calculation according to their own sectoral rules (see Article 329(1)(a)-(e) of the Commission Delegated Regulation EU 2015/35 of 10th October 2014).
- 3.316. EIOPA in conjunction with the NCAs, believes there is a further need for clarification in the regulation with regards to the treatment of other financial sectors.
- 3.317. Article 329(1) (a) to (e) states that the calculation of group solvency shall include capital requirements and own funds related undertakings from other financial sectors according to sectoral rules. Nevertheless, the reference to FICOD article 2(7) raises the following concerns:
- a. To what extent shall FICOD and the Delegated Regulation 342/2014⁵⁹ be taken into account when deciding the relevant own funds and capital requirement to include in the group solvency calculation?
 - b. Regarding the capital requirements to be included when calculating the consolidated group SCR, EIOPA clarified in the Q&A 1344 that the same capital requirements should be used in the Solvency II calculation as in the supplementary capital adequacy calculation for a financial conglomerate. This is as stated in Article 9 of Delegated Regulation 342/2014, that is, including all buffers and capital additions.
 - c. Regarding the own funds to be included in the group solvency calculation, it seems that the regulation for financial conglomerates is also relevant for the Solvency II calculation. This raises questions on the inclusion of sectoral own funds and the interaction between Solvency II and FICOD, including DR 342/2014. Do (and how should) the own funds have to be classified into tiers, tiering limits and their ability be assessed? Additionally, Guideline 11 of the EIOPA Guidelines on Group Solvency clarified that when related undertakings of OFS form a group, the group capital requirement should be considered instead of the sum of each individual capital requirements. It should be clarified whether this should also be the treatment of own funds from OFS that have been assessed for availability assessment according to that OFS sectoral rules.
 - d. The reference to the treatment of IORPs should be clarified. In Article 336(c) IORPs have a reference to 2003/41/EC. For the time being (until FICOD is updated to include also IORPs), the reference to only Article 2.7 of FICOD in Article 335(1)(e) Delegated Regulation seems incomplete. It is recommended to check that IORPs/pension funds referencing is aligned to the Solvency II Directive.

⁵⁹ Commission Delegated Regulation (EU) No 342/2014 of 21 January 2014 supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates.

3.318. There are two different supervisory practices regarding the value of related OFS entities in the group balance sheet. In some Member States this value corresponds to the proportional share of the own funds according to sectoral rules as mentioned in Article 335 (e) of the Delegated Regulation, while other Member States' value is according to Article 13 of the Delegated Regulation. It is worth mentioning that the first approach includes the amount of subordinated liabilities into the value (through own funds) and the second approach does not, which do not contribute to a harmonized approach regarding the value of participations in the group balance sheet. However the two approaches lead to the same contribution to group own funds.

3.319. EIOPA is also aware that changes to the regulatory framework of Other Financial Sectors may affect the interaction with the existent Solvency II framework. It is important that any revision by the legislator on the solvency requirements of other financial sectors avoids any unintended spillovers on the interaction between the legislation for other sectors with the existent Solvency II framework.

Implications of inclusion of credit and financial institutions into group solvency calculation based on national law (by method 1 set out in Annex I to Directive 2002/87/EC, by Method 2 set out in Annex I to Directive 2002/87/EC by Method 1 of the Solvency II Directive (effectively Article 335 1 e))

3.320. EIOPA notes that how Article 228 of the Solvency is implemented at National Law has an implication on how credit, investment and financial institutions are included into the group solvency calculation, and how strategic participations in other credit investment and financial institutions are treated at solo level.

Issues related to the application of Article 228 of the Solvency II Directive

3.321. In practice, according to Article 228, the application of FICOD Method 1 requires that the level of integrated management and internal control of the consolidated entities satisfy the NCA.

3.322. There is no guidance in the Directive or in the Regulation on how to assess whether the level of integrated management and internal control regarding the consolidated entities, which would be included in the scope of consolidation, is satisfactory, for the purpose of applying FICOD Method 1.

3.323. Art. 8 of Delegated Regulation 342/2014 states that the Solvency II Method 1 and FICOD Method 1 shall be considered equivalent for insurance-led financial conglomerates. However, there are a number of uncertainties associated with the application of this provision. For example, it is not clear which rules should be used in that regard (the ones required under FICOD or the ones under Solvency II).

- 3.324. Different treatment between entities authorised to apply Method 1 of Directive 2002/87/CE and not authorized entities; in case Method 1 of Directive 2002/87/CE is authorised, the NCA could authorise an elimination of 100% of the participation even if the entity is not significant.
- 3.325. FICOD Method 1 is hardly operable in practice. Indeed, applying Method 1 implies to use two different standards for the same consolidated data used to generate the balance sheet. Doing so, it is difficult to know how intra-group transactions, minority interests, etc. deductions should be done. While consolidating the asset side of the balance sheet does not seem to pose a particular challenge due to the similarity between both standards, it is conceptually difficult to shock these assets according to different formulas and risk factors.
- 3.326. In some countries the different implementation of Article 228 of the Solvency II Directive has an impact on the treatment of a participation in Other Financial Sectors (OFS) at solo level according to Article 68 (3) of Delegated Regulation. And specifically due to how Article 228 was transposed in certain Member States, the use of Method 1 of Solvency II is not allowed for banking sector's participations. Therefore, the Article 68 (3) remains practically not applicable to groups using Method 2 of FICOD.
- 3.327. It is noted from the survey, that there are 3 cases from 1 country, where a participating undertaking was allowed to deduct a participation in other financial sector from the own funds eligible for the group solvency of the participating undertaking, as referred to under Article 228 paragraph 2 of Solvency II Directive.

Capital Add-Ons and Group Solvency

- 3.328. EIOPA will publish the report required under Article 52 of Solvency II for 2017 data in December 2018. Values in brackets refer to the previous report published in December 2017 using 2016 data. This report includes an analysis of the use of capital add-ons (CAOs) at solo and group level. Based on this report, only 6 Member States imposed capital add-ons on 23 (20) solo undertakings; EIOPA reported in 2016 that this measure was used by 1 supervisor for 4 groups. In 2017, once more four groups from that supervisor had a capital add-on set, albeit the groups changed as one group saw its capital add-on removed, while another group had a capital add-on set for the first time. In addition, two groups from another supervisor had a capital add-on set. The relative size of the CAO ranges from 1% (2%) up to 83% (85%) of SCR for solo undertakings.
- 3.329. According to Article 51 (2) of the Solvency II Directive, EU and EEA Member States may exercise the option to temporarily limit the public disclosure of capital add-ons. In accordance with Article 51 (2) the capital add-ons information will only be publicly available for undertakings and insurance groups from all Member States at a later stage. For most undertakings, later means from November 2020 onwards, when capital add-ons will need to be publicly disclosed on an annual basis with the aim of improving market transparency and discipline. One NCA, however, already stated to have ended the transitional period by year-end 2017,

while another NCA highlighted to disclose capital add-ons two years after the implementation of Solvency II, i.e. at year-end 2018. Eventually, this disclosure should stimulate both an improvement in risk management, but as well lead to the better alignment of the SCR with the undertakings risk profile.

3.330. As stated, EIOPA is currently working on this year's report. Based on the information available :

- In 1 case, considering that the capital add-on set at solo undertaking level was not included in the calculation of the group Solvency Capital Requirement, there was no capital add-on at group level.
- In 3 cases, insurers with capital add-ons used Method 1 (the default method) - accounting consolidation-based approach (Article 230 of the Solvency II Directive).
- In 1 case, the capital add-on has been imposed on an insurance undertaking, which is a subsidiary of another Member State's group. Following discussions with the concerned NCA, it was decided that the capital add-on would not be taken into account in the group SCR. However, as the own funds covering the capital add-on were considered as non-transferable, the capital add-on limits the amount of own funds that are available at group level.
- In 1 case, the capital add-on was imposed on a bank belonging to the only group using Method 1 of FICOD. In this case, the capital add-on was directly taken into account into the FICOD's capital requirement.
- In case of one NCA, the capital add-ons have been included in the reported operational risk number at group level. The NCA has accepted this as the publication of capital add-ons is not obligatory for the first years after introduction of Solvency II.

Application of mutatis mutandis

3.331. In relation to the application of the mutatis mutandis principle to Groups, most challenges are encountered in relation to the following topics:

- system of governance
- fit and proper requirements for AMSB of insurance holding companies and mixed financial holding companies
- access to information for supervisory purposes
- capital add-on
- determining whether eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement
- transitional measures

3.332. The level of difficulty on the application of mutatis mutandis seems to be related to the level of experience on group supervision. Member States with large number of groups under their supervision have identified ways to deal with such issues. For instance, when the application of the mutatis mutandis was identified as more complex and or ambiguous, in order to ensure legal certainty, it was indicated to EIOPA that few NCAs have developed their own national rules and or guidance to reduce the

number of gaps regarding of group issues.

Challenges related to the mutatis mutandis application of the provisions on the system of governance set out in Articles 41 to 50 of the Solvency II Directive at the group level, as referred to in Article 246(1) of Solvency II Directive

- 3.333. Some NCAs identified challenges in the mutatis mutandis application of the provisions on the system of governance due to different approach in rules taken on the solo and group level. On group level provisions are written in the view of supervision while rules how the group shall act are missing. Due to inconsistency in wording it is also difficult to understand which rules are applicable for which types of groups.
- 3.334. In the absence of European provisions on the application of the individual governance rules mutatis mutandis at group level, for instance the Italian national regulatory framework allows a consistent application at group level of the guidelines defining the objectives and characteristics of the group governance system. By way of example, the provision concerning the solo level administrative body of an undertaking has been applied, mutatis mutandis, to the ultimate parent undertaking at the national level duties and functions administrative body in respect to the periodic review of the group governance system and the approval of group strategies and policies.
- 3.335. The mutatis mutandis in Article 246 was transposed into French law by creating a specific section in the "Code des assurances" on the governance of groups. This section lists the principles laid down in Articles 41 to 50 of the Directive and specifies the requirements to be applied at group level by the ultimate head (including an insurance holding company).
- 3.336. Challenges are also identified in the determination of the scope of group supervision, which includes all participating undertakings, subsidiaries and undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC, regardless of the activity carried out. In order to prevent different applications of governance provisions on the group level, some parameters for classifying group undertakings and consistently applying the regulatory provisions have been provided in the national regulation of two Member States.
- 3.337. It is difficult to interpret governance requirements for supervision at group level, especially concerning the assessment of requirements on the risks management and AMSB at group level. The mutatis mutandis refers to Articles 41 to 50 of the the Directive, which excludes Article 40, i.e. the final responsibility of the "group AMSB" for the compliance with Solvency II provisions (at group level), including the whole group governance provisions. The "group AMSB" is not defined either.
- 3.338. Furthermore, every AMSB of a solo undertaking is ultimately responsible for the implementation of the system of governance in its own undertaking. An unreflective implementation of only structures and processes defined by the AMSB at group level is not possible, because every AMSB has to ensure that the organisational structure and processes are appropriate for the own undertaking. This must also be

ensured if several undertakings in the group have outsourced some tasks to a common service provider within the group. But at the same time the AMSB of every undertaking within the group has also to ensure that the own structures and processes are consistent with (and not equal to) the structure and processes defined at group level (e.g. they use the same definitions for reported risks etc.).

- 3.339. Few NCA's noted that obligations of mixed financial holding companies to arrange system of governance according to Solvency II rules in addition to those requirements set out in FICOD is not quite clear.

Challenges related to the mutatis mutandis application of the provisions set out in Article 42 of the Solvency II Directive on the fit and proper requirements for AMSB of insurance holding companies and mixed financial holding companies, as referred to in Article 257 of the Directive

- 3.340. It seems that the application of provisions set out in Article 42 of the Solvency II Directive 2009/138/EC on the fit and proper requirements for AMSB of insurance holding companies and mixed financial holding companies highly depends on the way of implementation into national law.

- 3.341. EIOPA is aware of one Member State national law where Article 257 of the Solvency II Directive is partly implemented, it states that all persons who effectively run the insurance holding company or mixed financial holding company should be fit and proper and it does not state that Article 42 of the Solvency II Directive is applicable mutatis mutandis. This results in the ASMB being assessed on fit and proper requirements but not regarding the key function holders at holding level.

- 3.342. The national law of this Member State, however, states Article 42 of the Solvency II Directive is also applicable at group level, which leads in EIOPA's view to the same result as Article 257 mutatis mutandis reference (Article 42 requires the key function holders to be fit and proper). The NCA agrees that this would be an alternative route to achieve the same result but requested the Ministry of Finance for a change in the supervisory law to bring the national law in line with Article 257. For the time being, the NCA's only assesses key functions holders at group level who also have a function at subsidiary level and therewith come under Article 42 of the Solvency II Directive.

- 3.343. On the other hand, in other Member State, Article 257 of the Solvency II Directive was transposed into national law by providing that the insurance/mixed financial holding companies must notify the NCA of any new appointments or changes to the existing appointments of persons who effectively run the holding company, which also includes AMSB. The holding companies are also required to provide all information needed for the NCA to assess whether the persons who are subject to the notification are fit and proper.

- 3.344. Notwithstanding the above, it is worth noting that there is an element of ambiguity as to who is intended to fall within the scope of Article 257 of the Solvency II Directive. In particular, it is unclear whether it was intended that Article 257 is limited to members of the AMSB of the

holding company, as indicated in the title to this article, or be of wider application, as might be indicated by the text of Article 257 itself (persons who effectively run insurance holding company or the mixed financial holding company). For that reason, EIOPA considers that providing further clarity in that regard would support the supervisory convergence among the NCAs.

Challenges related to the mutatis mutandis application of the provisions on the access to information for supervisory purposes set out in Article 35(1) to (5) of the Solvency II Directive for exercising group supervision regardless of the nature of the undertaking concerned, as referred to in Article 254(2) of the the Directive

3.345. One NCA emphasised the need to perform a common review of how and where the different group terms are used. The Article 254 refers to "Access to information" – Information NCA should have access to, but not who should report this information. The Article 35 refers to "Information to be provided for supervisory purposes" and describe only what to be reported. There is also a lack of information, which undertaking/type of group should report to the NCA. The inclusion of Omnibus 2 has to some extent made it difficult to interpret the reporting rules, which is even more difficult at group level.

3.346. As responsibilities put on the holding companies depend on the national law, some NCAs noted difficulties in accessing information for supervisory purposes from holding companies or that information received on holding companies is not of the same quality and content that the insurance ones.

Challenges related to the mutatis mutandis application of the provisions on the capital add-on set out in Article 37 of the Solvency II Directive together with the delegated acts and implementing technical standards on the group level, as referred to in Articles 232 and 233 (6) of the Directive

3.347. Articles 232 and 233 of the Solvency II Directive refer mutatis mutandis to the delegated acts and implementing technical standards. A capital add-on can be set on a group when the system of governance at group level deviates significantly from the standards. The Article 246 of the Directive - system of governance for groups do not have the same mutatis mutandis reference as it has for capital add-on for groups. Furthermore, it is difficult for the supervisors to determine if the risk profile deviates significantly from the SCR requirements at solo-level as specified in Article 279 in the delegated act. This is even more difficult at group level.

3.348. An ad-hoc question asked by the Commission to EIOPA dealt with the comparison of the minimum group SCR with the group SCR (i.e. where the minimum is (likely to be) breached before the group SCR).⁶⁰ EIOPA notes that for a few groups, the ratio of minimum consolidated group SCR to eligible own funds can be lower or close to the Group SCR ratio. The main causes for this situation is that the minimum consolidated

⁶⁰ See Advice of Eiopa on Comparison of Banking and Insurance Own Funds and Analysis done for cases of "trigger inversion".

group SCR is calculated as a sum of solo MCRs, without a corridor⁶¹ such as the one provided in Article 149 of the Solvency II Directive, but also that groups can recognize diversification benefits in the group SCR calculation between undertakings.

- 3.349. EIOPA and NCAs notes that in such cases, the minimum consolidated group SCR limits the diversification benefits that European groups may claim. The European Commission should consider these identified effects and limitations when reviewing the Solvency II Directive.
- 3.350. Another issue identified by NCAs is related to the way third-country undertakings are included in the calculation of the minimum consolidated group SCR. According to Article 230(2) of the Directive, the minimum consolidated group SCR should include the proportional share of the MCR of the related insurance and reinsurance undertakings. While EIOPA clarified in the explanatory text of guideline 21 of the EIOPA guidelines on group solvency that the calculation should include third country undertakings' local capital requirements, at which the authorization would be withdrawn. However, such an interpretation would need to be clarified in the legislation.

Challenges related to the mutatis mutandis application of the transitional provisions set out in Article 308b (paragraph 8 to 12, 14 and 15), Articles 308c, 308d and 308e at the group level, as referred to in Article 308b(17) of the Solvency II Directive.

- 3.351. Where a transitional measure is applied at solo level, one NCA noted a potential issue or uncertainty as to whether the benefit from the solo transitional measure can be transferred to the group. According to the legislation, the benefit from the solo transitional measure affects the net asset value of the beneficiary undertaking and therefore is part of the reconciliation reserve, which by default is a transferable element of own funds. However, as the benefit of the transitional measure strictly derives from the nature of the solo undertaking's business, portfolio and risk profile. Therefore, it is to be discussed whether this benefit could absorb losses anywhere in the group. Further guidance and clarification on this matter would be welcome.
- 3.352. EIOPA and NCAs note that there are uncertainties with regard to the recognition of the benefit of transitional measures and other LTG measures at group level. While most NCAs are of the view that there is no need to re-approve at group level the benefit of transitionals at solo level, there are still some doubts as to whether the co-legislator intended to require NCAs to re-approve solo transitionals and LTG measures at group level. EIOPA and NCAs are of the view that more guidance is necessary.
- 3.353. Interventions implemented in the national law by NCAs, made necessary by the European framework, and the different interpretations linked to

⁶¹ Article 129 (4) of the Solvency II Directive "Without prejudice to paragraph 1(d), the Minimum Capital Requirement shall neither fall below 25 % nor exceed 45 % of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter VI, Section 4, Subsections 2 or 3, and including any capital add-on imposed in accordance with Article 37"

the concrete definition of the principle of mutatis mutandis of the individual provisions at group level, do not ensure a European harmonized approach. Although some of the issues are recognized by EIOPA and addressed by EIOPA specific tools (e.g. opinions, guidelines, questions and answers) in order to support supervisory convergence, EIOPA in conjunction with the NCAs believes there is a need for development of more detailed and concrete definition of the application of the principle of mutatis mutandis of certain individual provisions to the group.

3.10.3 Reflections on Group Solvency Calculation; and others

- 3.354. Given the complexities regarding the calculation of group solvency, it requires certain level of expertise among group supervisors and it is noted that such knowledge is usually concentrated among few experts across NCAs.
- 3.355. EIOPA notes, based on the information received and discussions at various Expert Networks, that there are general areas where group supervisors could benefit from further clarifications as highlighted in this document. In some circumstances, the NCAs applied EIOPA's guidance available in Opinions.⁶² The next paragraphs provide some examples of areas where NCAs indicated that could benefit from clarifications.
- 3.356. For instance, regarding the application of Method 1, questions often arise on:
- Issues regarding the inclusion of related non-regulated undertakings, including intermediate IHCs and MFHCs.
 - Issues regarding the determination of consolidated data.
- 3.357. In relation to the application of Method 2 and Combination of Methods, there is a clear gap in the regulatory framework regarding:
- Adequate application of the Combination of Methods, e.g. how to deal with the group solvency capital requirements when using the Combination of Methods (e.g. lack of clarity when the principles of Method 1 should prevail over Method 2 principles, or vice versa)
 - Inclusion of insurance holding companies and mixed financial holding companies
 - Other issues about the application of Method 2 and the Combination of Methods are related to third country solvency requirements to be taken into account in the group solvency calculation, in case of equivalence.
- 3.358. EIOPA also notes that there is a general need to address the referencing from Solvency II framework to Other Financial Sectors (OFS). Solvency II places reliance on the regulatory framework of other financial sectors.

⁶² This is not a solution to all NCAs, as some NCAs have indicated that they have challenges with the enforceability of EIOPA Opinions in their jurisdictions.

However, clarification is needed on how and what to include regarding related OFS that are calculated according to sectoral rules. For instance, how to ensure adequate classification of own funds and to what extent availability assessment should be applied.

3.359. On the application of *mutatis mutandis* to groups, most challenges are encountered in relation to:

- Systems of Governance
- Fit and Proper requirements for AMSB of insurance holding companies and mixed-financial holding companies.
- Access to information for supervisory purposes
- Capital Add-Ons
- Determining whether eligible own funds qualify to cover the minimum consolidated group solvency requirement
- Transitional measures
- Transposition into National Law

3.360. It is noted that although some NCAs indicated that they currently face no challenges regarding the application of some of the *mutatis mutandis*; but this does not mean that they never faced any challenge. In some cases, NCAs also found a way to reduce such a gap by establishing additional rules at national level so that they could ensure consistency of application of the law for the solos and groups under their supervision. However, interventions implemented in the national law by NCAs, made necessary by the European framework, and the different interpretations linked to the concrete definition of the principle of *mutatis mutandis* of the individual provisions at group level, do not ensure a European harmonized approach.

3.361. Although some of the issues related to application of *mutatis mutandis* are recognized by EIOPA and addressed by EIOPA specific tools to support supervisory convergence (e.g. opinions, guidelines, questions and answers), EIOPA is of the view that there is a need for development of more detailed and concrete application of *mutatis mutandis* of certain solo provisions at the group level. For further information, please refer to the main body of the report.⁶³

⁶³ Possible solutions could be to adopt a policy stand either at Level 1 (Directive) or at the Level 2 (Delegated Regulation) for some of the cases presented in this report (for instance, Fit-for-purpose and systems of governance). However, such a decision will require a policy assessment of its own.

3.11 Freedom of establishment and freedom to provide services.

3.11.1 COM's Request on Freedom of establishment and freedom to provide services.

COM's Request:

EIOPA is asked to provide support, *inter alia*, to the assessment of:

- 3.11.1 cases where groups transformed related undertakings into branches ("branching out") since the application of Directive 2009/138/EC and two years prior;
- 3.11.2 if applicable, a lack of supervisory powers related to insurance activities conducted under freedom to provide services, or omissions of exercising such powers, including the risks of circumvention of prudential or market conduct requirements, of under-reserving, of misleading information in marketing material about compliance with capital requirements, and of lack of clarity about the identify of persons responsible for key functions;
- 3.11.3 practices on the co-operation and the information exchange among national competent authorities to ensure proper supervision of freedom to provide services.

3.11.2 Findings on Freedom of establishment and freedom to provide services.

3.362. EIOPA fosters continuous close interaction with NCAs in order to enhance the efficiency and effectiveness of the European supervisory system with a particular focus on cross-border activities, within either an insurance group structure or through freedom of establishment or freedom of providing services, with the aim to have a stronger and even more co-operative European supervisory community.

3.363. Cases where groups transformed related undertakings into branches are identified in most of the Member States, either since the application of Solvency II (16 cases reported) or two years prior (25 cases reported), but one NCA noticed that the branching out process started even earlier (6 cases since 2009).

3.364. Branching out is not necessarily related to the application of the Solvency II framework but is a result of the group business strategy to simplify the group structure and optimize the business. Several NCAs identified relations of branching out to the application of Solvency II framework due to the complexity of the framework, high costs of implementation and the constant compliance with the requirements. One NCA observed that the branching process related with the Solvency II framework started much earlier as almost half of the life and non-life insurance market were reorganised to branches.

3.365. Since College of Supervisors are not established when the crossborder activity of the undertaking is limited to FoS and FoE, there is no established binding tool where home and host supervisors are supposed

to discuss and possibly agree on pending issues of common interest. Regular and effective collaboration between home and host supervisors to discuss undertakings operating on a FoS and FoE basis, including regular exchange and sharing of information is therefore essential. Although it is noted by EIOPA and NCAs that collaboration between NCA's on crossborder issues has been improved after the signature and the application of the Decision on the collaboration of the insurance supervisory authorities, there is still room for improvement in the operational application of the Decision across certain NCAs. As explained in detail in the following paragraphs, EIOPA in conjunction with NCAs identified a number of issues related to cross-border business activities provided through FoS and FoE in certain areas as with regards to information exchange and co-operation. There is an overarching matter to address other issues such as reserving, governance, distribution, complaints handling, notification and reporting.

3.366. The COM specifically asked about any lack of supervisory powers related to insurance activities conducted under Freedom to Provide Services, or omissions of exercising such powers. From the responses received, NCAs reported general issues in the context of FoS and FoE including information exchange. The following cases are specifically noted regarding challenges encountered:

- 4 NCAs claimed a lack of prudential powers as a host supervisor
- 7 NCAs claimed lack of powers as a conduct host supervisor

The lack of powers is emphasized especially in those cases where the insurance activity is carried out exclusively or almost exclusively on a freedom of services basis outside the home jurisdiction.

See further details of various cases presented in the next sub-sections (e.g information on exchange issues, reserving issues, governance issues, distribution issues, complaints handling issues, notification issues, reporting issues).

3.367. EIOPA notes that the reliance on the home country approach requires strong collaboration among home and host supervisors to avoid arbitrage and to ensure a similar level of protection to policyholders across the EEA regardless of the location of the undertaking's head office. In EIOPA's view, this highlights the need for NCAs to closely work together on the area of timely co-operation and information exchange.

3.368. The topic of cross-border business activities provided by groups and solo undertakings through the freedom to provide service (FoS) and Freedom of Establishment (FoE) continues to be at the front of the discussions at supervisory level. EIOPA and its members agreed via a BoS Decision (EIOPA-BoS-17/014) to reinforce supervisory co-operation and exchange with a focus on the following areas:

- authorisations including information exchange on the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions, authorisations sought in other Member States;
- information flows between Home and Host NCAs (FoE and FoS) at the notification and ongoing stages aiming an early and timely exchange of information including issues that led to recent cross-

border problems;

- increase of co-operation on notification and ongoing stages, including on-site activities, and in case of closure of a branch and cessation of FoS activities;
- participation of FoS Host NCAs in specific sessions of Colleges of Supervisors where activity carried out by FoS activities is discussed;
- creation of co-operation platforms where no college of supervisors is established.

3.369. Following this and according to the EIOPA mandate to continue to monitor the implementation of the Decision on the collaboration of the insurance supervisory authorities, EIOPA decided to use its tools to ensure a consistent application of the Decision across the European Union by organizing and conducting peer review in Q4 2018.⁶⁴ The tool of peer review itself, with the emphasis on collaboration in a peer setting, further emphasizes the dependence on co-operation and collaboration.

3.370. In addition, the recently adopted BoS Decision on co-operation between NCAs under the IDD (“the revised Luxembourg Protocol”)⁶⁵ will bring important changes in enhancing supervisory co-operation and exchange of information on conduct of business issues such as product oversight and governance processes. The Decision replaces the former Luxembourg Protocol, which had to be substantially revised as a result of the new regulatory framework for insurance distribution activities under the Insurance Distribution Directive (IDD) and the recent supervisory experience with cross-border insurance distribution activities. The Decision takes account of the broader scope of the IDD, covering the distribution activities not only of insurance intermediaries, but also insurance undertakings and ancillary insurance intermediaries, as well as more detailed provisions on the registration of, and notifications by, insurance intermediaries acting on a freedom to provide services and freedom of establishment basis.

The Decision covers:

- Registration and notification of insurance and reinsurance intermediaries and ancillary insurance intermediaries
- Exchange of information and ongoing supervision of insurance and reinsurance distributors
- The treatment of complaints;

The Decision aims to strengthen the co-operation between NCAs and in particular to enhance the exchange of all relevant information, enabling NCAs to fulfil their supervisory tasks and to protect customer interests. The Decision is an important step to ensure well-functioning, risk-based and preventive supervision of the insurance market throughout the EU. However, EIOPA will closely monitor the implementation of the Decision, and will use its tools to ensure a consistent application.

⁶⁴ Project plan for peer review on the Decision on the collaboration of the insurance supervisory authorities (EIOPA-BoS-18/007)

⁶⁵ Decision of the Board of Supervisors on the co-operation of the competent authorities of the Member States of the European Economic Area with regard to Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution, EIOPA-BoS/18-340 of 28 September 2018

Information exchange issues

- 3.371. Key issues in supervising undertakings operating on a FoS and FoE basis especially relate with the lack of a proper view of whether the undertaking has a clear understanding of the risks that it faces, or may face, in the host territories and the lack of a proper exchange and co-operation between NCAs. Challenges that home supervisors might face relate to the need for local market knowledge, an understanding of specific local insurance products, relevant laws and requirements, knowledge of the local claims environment, awards and court systems and knowledge of local intermediaries used to distribute the products. Challenges that host supervisors face relate to the limited knowledge about the activities of entities providing FoS and FoE in the host Member State and limited access to relevant data. These differences have partly arisen out of the manner in which the Insurance Mediation Directive (IMD), a minimum harmonizing Directive, was implemented in the different Member States, but are also caused by diverging supervisory approaches taken by the NCAs.
- 3.372. A common EU supervisory framework on market conduct is yet to be built, even though work is in progress, including the recent adoption of a BoS Decision on co-operation between NCAs under the IDD ("the revised Luxembourg Protocol").
- 3.373. Different intensity of supervision on FoS and FoE activity which is often dependent on the prioritization due to the risk-based approach to supervision, adequacy of tools and resources of NCAs, may give rise to supervisory arbitrage. To this regard, EIOPA's role in enhancing supervisory convergence is of great importance.
- 3.374. On the question on the possible lack of supervisory powers related to insurance activities conducted under FoS, including the risk of circumvention of prudential requirements, few NCAs noted that the host supervisor would not have sufficient information in order to identify whether an undertaking circumvented its prudential requirements. For that reason, in the event of such circumvention, in particular in case of a breach of the solvency capital requirement by undertakings providing FoS activity, early communication from the home supervisor to the host supervisor is crucial, as requested in the Decision on the collaboration of the insurance supervisory authorities.
- 3.375. Supervising FoS and FoE activities, if there is no open and timely communication with the host supervisor, can be challenging for home supervisors, especially in the case where the majority of the overall business of undertaking is carried out by FoS and FoE in another Member State. According to the information provided by one NCA, this evidence is not easy to identify, even in data exchanges with EIOPA. Nevertheless it is important to detect, in particular with regard to any legal or supervisory arbitrage.
- 3.376. Several NCAs mentioned that in their role as a host supervisor, they are often facing difficulties in obtaining (timely) answers on questions regarding conduct of business or specific product information directed to

insurance undertakings operating under the FoS or FoE license, as FoS and FoE undertakings do not consider themselves obliged to provide the host supervisor directly with information upon request. The host supervisor may approach the undertaking and request data relating to the host Member State, but is not able to oblige the undertaking without recourse to the home Member State, which leads to the conclusion that there is a lack of mandate to enforce these timely answers, as the current Solvency II framework does not foresee deadlines or enforcement measures regarding the lack of answers on questions asked by the host supervisor.

Reserving issues

3.377. In the case of addressing possible under-reserving issues of the undertakings operating under a FoS and FoE licence, several home supervisors mentioned challenges in co-operation with prudential supervisors in this regard. It is the role of the home supervisor to have the necessary processes in place in order to enable them to understand and challenge the sufficiency and adequacy of the reserves held by the undertaking in respect of their FoS and FoE business.

3.378. The host supervisor has no remit to review the governance and monitoring frameworks of undertakings operating under FoS and FoE, and therefore they must rely on the information provided by the home supervisor, who can access (and ask the undertaking) the necessary information in order to check the appropriateness of the reserving process and the adequacy of the technical provisions. Again, information exchange on the specificities of local market, vulnerabilities discovered during the monitoring of compliance with the local legal provisions and following conduct of business supervision by the host supervisor and timely update by the home supervisor on the outcome of inspections performed in this regard is of great importance, as required by the Decision on the collaboration of the insurance supervisory authorities.

Governance issues

3.379. Lack of harmonisation in relation to propriety assessment of AMSB members and qualifying shareholders led to discrepancies in the outcome of the assessment in the home and host Member State. In some cases, subjects that are not considered proper in one insurance market for having being under investigation for fraud or other crimes, tried to operate in the same insurance market from another Member State, relying on the lack of information and possible communication gaps between authorities situated in different jurisdictions (regulatory arbitrage), including different judgments of the competent authorities on the same facts due to the principle based nature of the Solvency II Directive.

3.380. On the lack of clarity about identification of persons responsible for key functions, few NCAs mentioned that they as host supervisors do not have adequate information on the persons responsible for key functions and that they have difficulties in getting such information. In other Member States it is clear who is responsible for a key function, but the questions whether sufficient resources are allocated to perform the function, how the function is performed in the branch or operating under FoS in order

to manage overall risk of the undertaking still remain.

3.381. As observed by one host supervisor, the relevant risks associated with undertakings operating under FoS that use an MGA model (Managing General Agents) relate to the outsourcing and delegation of key functions by the undertakings to the MGA. While the existing regulatory framework says that the undertaking retains full responsibility for all outsourced/delegated activities or key functions, issues can occur where there is ineffective monitoring and oversight of these activities by the undertaking. This can provide a challenge for the host supervisor.

3.382. In this regard, the Decision on the collaboration of the insurance supervisory authorities also increased the granularity of the information exchange at authorization, notification and ongoing stages.

Distribution issues

3.383. Several NCAs identified a lack of supervisory powers as a host supervisor related to the distribution of insurance products because the control is limited in the case of FoS. In the FoS activities few host supervisors reported consumer detriment arising from a failure to act honestly, fairly and professionally in the best interests of customers for example, a lack of transparency in the relationship with consumers, both during the sale of products and the execution of contracts (e.g. missing payment), issues in behavior of the sales network and lack of monitoring performed by insurance undertakings on their intermediaries. It is anticipated that the Insurance Distribution Directive (IDD) will help to address some of these concerns relating to poor product design and inappropriate sales practices and the IDD provides that competent authorities shall be given all investigatory powers that are necessary for the performance of their duties under the Directive.

3.384. Cases of regulatory arbitrage are also noted by one NCA as many FoS undertakings are potentially overstepping the arrangements permissible within the host state. For example, internal group intermediaries and claims handlers are assuming delegated authority that are not self-determining or independent from the principal. Notification of freedom of establishment and freedom of services is subject to the home supervisor concern and is not necessarily consistent with the undertakings proposed business plan or distribution methods. The host supervisor must spend significant time and resources to challenge the arrangement.

3.385. In cases where the consumers' complaints are linked to the activities of intermediaries (typically mis-selling, and or provided misleading or missing information prior to the conclusion of the contract), at least one NCA mentioned that as a host authority they can investigate individual cases only, but in case of a systemic problem, without an analysis of the system of governance and control functions, it is difficult to take any measures that make real changes in the operation of insurance undertaking. The assessment of the proper practice or usage of the pre-contractual information disclosed to customers through standardized disclosure documents - in some cases - would make it necessary to investigate the investment practices of insurance undertaking, but such an investigation cannot be conducted as host authority.

- 3.386. As emphasized by at least one host supervisor, professional competence requirements are within the responsibility of a home state, which means that the host supervisor does not have supervisory powers to require undertakings operating on FoS basis to ensure that staff, who carry out activities, which are particularly relevant for conduct regulation (such as sales, advice and dealing with claims and complaints) meet the same standards of knowledge and competence which are imposed on domestically regulated insurance undertakings and insurance intermediaries. Nevertheless, EIOPA has noted in its work on examining the imposition of general good requirements by host NCAs in the context of the distribution of insurance products across borders that some Member States may seek to include additional professional requirements under the scope of national general good rules.
- 3.387. Some NCAs identified different standards on business conduct between the related undertaking and the undertaking operating under FoS where both of them were belonging to the same group and being competitors to each other on the same market.
- 3.388. Furthermore, few host supervisors identified a risk of companies operating under FoS circumventing certain restrictions on specific clauses or products imposed by local regulators on local companies, especially related to product design and types of assets or reference values to which policy benefits may be linked.
- 3.389. One NCA identified some products commercialized in its jurisdiction by branches from other Member State instead of the branch established in their own Member State of the same group, likely to benefit from a different regulatory environment in the home Member State of the branch. Experience from host supervisors has shown that it is difficult to track which companies, that have FoS status for multiple branches/lines of business, effectively commercialize products for all branches they have this FoS for.
- 3.390. It is expected that the recently adopted Revised Luxembourg Protocol will enable a closer co-operation and exchange of information between home and host authorities in order for action to be taken in relation to the product design, information disclosed to customer and sales practices.

Complaints handling issues

- 3.391. Another aspect of circumvention of market conduct requirements identified by most of host supervisors relates to complaints handling and non-compliance with the complaint handling regulation (including EIOPA's Guidelines on complaints handling by insurance undertakings and insurance intermediaries). Issues with the quality and timelines of claims handling of the undertakings operating under a FoS licence and challenges in co-operation with prudential supervisors in this regard are identified in most Member States.
- 3.392. One host supervisor identified cases of regulatory arbitrage for individual consumer redress in cases when passporting undertakings do not elect to join the Financial Ombudsman Service's Voluntary Jurisdiction. In the

case dispute over claim, the customer would complain to the Financial Ombudsman Service who will turn down the complaint as not being within their jurisdiction and advise to contact the home supervisor or ombudsman service. The Home supervisor advises they are not a conduct supervisor/dispute resolution mechanism. The Home state Ombudsman will not act if the insurance policy is not under home state law. The only available action was to take the insurance undertaking to court in the home Member State, which is not a realistic option.

Notification issues

3.393. According to notification rules, insurance undertakings under Solvency II, which intend to pursue business for the first time in one or more Member States under the freedom to provide services shall first notify the supervisory authorities of the home Member State, indicating the nature of the risks or commitments they propose to cover. Under IDD, insurance intermediaries are required to notify their intention to carry on insurance distribution business within the territory of another Member State. However, few host supervisors identified that notifications are often incomplete, meaning that they often do not have accurate information on the contacts of those undertakings operating under a FoS licence, which forces host supervisors to write several times to the home NCA before having an answer. NCAs should put more effort in complying with the rules and principles of co-operation stated in the Decision on the collaboration of the insurance supervisory authorities in order to achieve common objective of insurance supervision. An equivalent compliance with the rules in the revised Luxembourg protocol is also expected in the future.

3.394. Moreover, while many insurance undertakings and insurance intermediaries make a notification, they may not carry out business in a jurisdiction so the host supervisor may have no indication whether an incoming insurance undertaking and insurance intermediaries are effectively active in its market and what products they are offering. NCAs noted that it would be helpful for host supervisors to receive timely information on precisely when an insurance undertaking and insurance intermediaries commences business in a jurisdiction.

3.395. As current regulation says that host Member State can only require an insurance undertaking that proposes to pursue insurance business within its territory to effect non-systematic notification of policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts. However, at least one host supervisor identified difficulties in verifying compliance with certain national provisions when notifications to host supervisors can only be non-systematic.

Reporting issues

3.396. In general, for supervising FoS business, most of the host supervisors emphasized that prudential data could be helpful in addressing conduct of business issues, but the host supervisors do not have access to such data.

- 3.397. Where certain reports are reserved for the home supervisor and not shared with the host supervisor or have been left optional by the home supervisor and are thus not collected at all, host supervisors perceive some lack of supervisory power with regards to FoS business. If, for instance, host supervisors want to check the way the investment policy of unit-linked products (also linked to the PRIIPs regulation) is executed, they need a full look-through approach of all investments made by the insurance undertaking on behalf of the product. This is the only way to verify if the description of the investment policy in the pre- contractual and marketing documents is coherent with the actual portfolio.
- 3.398. On the other hand, some host supervisors require national undertakings to make regular and ad-hoc returns on market conduct indicators which is not available from FoS undertakings, and therefore making host supervisors unable to assess or peer review the conduct of these undertakings and consumer outcomes from this business.
- 3.399. In the case of significant branches in the territory of host Member State, some host supervisors pointed out that from a consumer perspective the language related to the group SFCR disclosure could be an issue.
- 3.400. The translation requirements currently in place⁶⁶ may not cover the need of information for branches. For instance, some NCA believe, that when the group prepares a single SFCR, the host Member State should have the possibility to demand the group to translate it to the official language of the Member State in which the branch is established. This translation requirement should apply to the branch business and the executive summary for the whole group.
- 3.401. Although quantitative data on FoE/FoS activities are exchanged with each concerned host supervisor by EIOPA on a regularly basis,⁶⁷ some of the NCAs suggested that reporting is necessary to supervise compliance with conduct of business rules in both the home and host Member State to be improved and even made mandatory, and should be shared with host supervisors on a more frequent basis.
- 3.402. EIOPA is of the view that the information regarding cross-border business be enhanced in the Solvency II reporting package given its importance from a prudential perspective. The current requirements were designed to comply solely with Article 159 of Solvency II which is mainly

⁶⁶ Article 360 of the Delegated Regulation lays down rules to address the following three scenarios regarding the summary of the group SFCR

Scenario A: In the context of [national] group supervision, the group supervisor determines the language (typically, that would be the *national* language of the group supervisor).

Scenario B: in the context of cross-border supervision involving supervisors from different member states, the group supervisor may require disclosing the SFCR in another language that is *most commonly understood* by the supervisors (i.e. discretion of the group supervisor in consultation with the other supervisors to decide on disclosure in an additional language, and on which that language is).

Scenario C: where the head office of the insurance or reinsurance subsidiaries is in a member state whose official language [say BG] is different from the language(s) in which the group SFCR is disclosed [say DE and EN] under scenario A and B, the participating insurance and reinsurance undertaking, etc. has to disclose the summary of the report into the official language of that member state (obligation to disclose in more than the two languages depending on the number of head offices located in member states that do not have DE and EN as official language, as in the example).

⁶⁷ Decision on the collaboration of the insurance supervisory authorities (EIOPA-BoS-17/014); Part V Regular exchange of quantitative data

addressing statistical needs and should be reviewed having in mind prudential needs of both home and host supervisors.

Practices on the cooperation and the information exchange among national competent authorities

- 3.403. In order to address identified issues related to cross-border business activities provided through FoS and FoE and to enhance co-operation and communication between supervisory authorities in such situations, EIOPA rolled out co-operation platforms - a new and important tool that facilitates stronger and timely cooperation between national supervisors in the assessment of the impact of cross-border activities and identification of preventive measures. Benefits of co-operation platforms have been identified for both home and host supervisors.
- 3.404. The work done so far demonstrates the added value of the co-operation platforms as an improved supervisory tool in European supervision in the case where there is no group supervision established.
- 3.405. By year-end 2017, nine co-operation platforms were operational with the involvement of NCAs from Denmark, France, Greece, Ireland, Italy, Luxembourg, Malta, Norway, Spain, the United Kingdom and the United Kingdom Overseas Territories (Gibraltar). In November 2018, six new co-operation platforms were established with the involvement of NCAs from the following countries: Denmark, Bulgaria, Slovakia, Romania, France, Greece, Ireland, Italy, Norway, Spain, the United Kingdom, Germany, Hungary, Czech Republic, Austria, Poland, Finland, Lithuania, Sweden, Malta and Island.
- 3.406. A platform is set up when EIOPA and relevant NCAs see the merit in strengthening the co-operation on cross-border business enabling a sound internal market in EU.
- 3.407. The platforms allow home supervisors to make use of expertise and knowledge about local market specificities from host supervisors, and allows host supervisors easier access to information about supplier of local market products while raising awareness of possible issues in their market in a timely manner.
- 3.408. The strength of the platform lies in transparent and timely information sharing, enabling more co-ordinated and timely supervisory measures, while EIOPA contributes to the wider European picture, and to the support to host and home supervisors and facilitates smoother communication.
- 3.409. However, there are also certain limitations on the establishment and efficient operations of the platform. Establishment of co-operation platform requires acceptance from the home supervisor to see the benefit in setting up such a platform and co-operate with host supervisors and EIOPA.
- 3.410. Obstacles to setting up a platform may rise when there is a lack of priority or co-operation from home supervisors and/or host supervisors. Even in the case of high prioritization, priorities of the supervisory

authorities concerned may differ. Whereas host supervisors may strive to terminate writing new business as soon as possible to protect the policyholders in their jurisdiction, home supervisors may see such an action as detrimental to their attempt to steer the undertaking into safer waters. EIOPA's role is to maintain a co-ordinated response from all supervisors and to weigh the interests of all policyholders involved.

3.411. Likewise, it is not possible nor risk based to establish co-operation platforms for every FoS and FoE. The co-operation platform needs to be tailored to the problems clearly identified by the NCAs and/or EIOPA. Therefore there is a high dependency on timely and accurate information on cross-border developments.

3.412. For that matter, regular and effective collaboration between home and host supervisors to discuss undertakings operating on a FoS and FoE basis including regular exchange and sharing of information is recognized as a good preventive measure allowing for early identification of potential issues. EIOPA also supports other means of co-operation such as joint themed on-site inspections, which, contribute positively to FoS and FoE supervision and information exchange among NCAs.

3.413. NCAs noted that EIOPA's role could be strengthened by setting up specific tasks and powers to address the challenges faced regarding cross-border issues by creating and supporting the co-operation between home and host supervisors, including more clear powers to initiate establishment of co-operation platforms. Moreover, it would be important for EIOPA to be informed at an early stage of cross-border developments that can be a source of potential issues and to play a co-ordination role to manage and efficiently conclude on-going cross border issues among home and host supervisors.

3.11.3 Reflections on Freedom of Establishment and Freedom to provide services

3.414. EIOPA offers tools to strengthen supervision of cross-border business (e.g. EIOPA's Board of Supervisor's Decision on the collaboration of the insurance supervisory authorities), including co-operation platforms that are recognized as an improved supervisory tool in European supervision in the case where there is no group supervision established. Nonetheless, cross border supervision is not free from challenges, and a continued effective collaboration between home and host supervisors to discuss undertakings operating on a FoS and FoE basis is a must. This includes regular exchange and sharing of information that is useful to set good preventive measures and allows for early identification of potential issues. Although it is noted by EIOPA and NCAs that collaboration between NCA's on cross-border issues has been improved after the signature and the application of the Decision on the collaboration of the insurance supervisory authorities, there is still room for improvement in certain areas.

3.415. The COM specifically asked about any lack of supervisory powers related to insurance activities conducted under Freedom to Provide Services, or omissions of exercising such powers. From the responses received, NCAs

reported general issues in the context of FoS and FoE including information exchange. The following cases are specifically noted regarding challenges encountered:

- 4 NCAs claimed a lack of prudential powers as a host supervisor
- 7 NCAs claimed lack of powers as a conduct host supervisor

The lack of powers is emphasized especially in those cases where the insurance activity is carried out exclusively or almost exclusively on a freedom of services basis outside the home jurisdiction.

See further details of various cases presented in the main body of the report (e.g. information on exchange issues, reserving issues, governance issues, distribution issues, complaints handling issues, notification issues, reporting issues).

3.416. EIOPA notes that the reliance on the home country approach requires strong collaboration among home and host supervisors to avoid arbitrage and to ensure a similar level of protection to policyholders across the EEA regardless of the location of the undertaking's head office. In EIOPA's view, this highlights the need for NCAs to closely work together on the area of timely co-operation and exchange info.

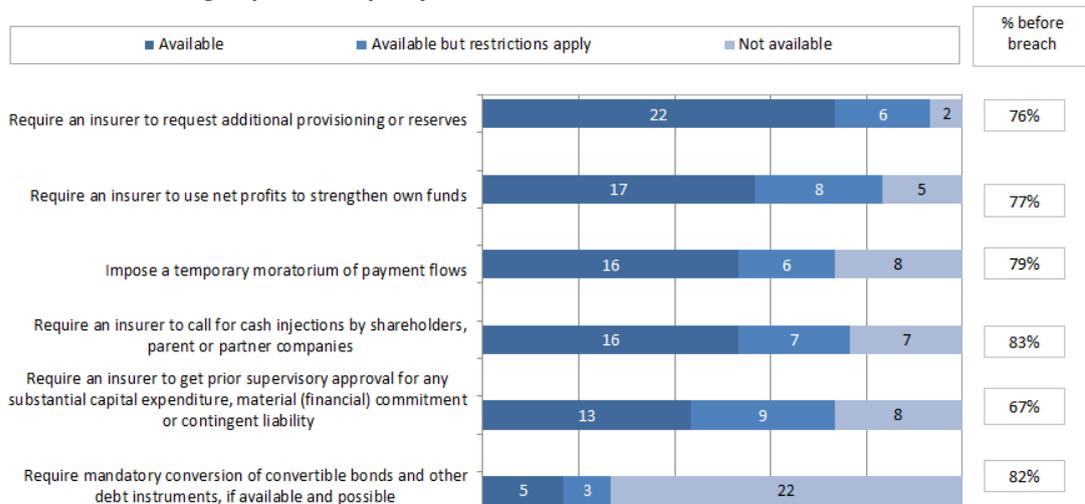
3.417. In order to strengthen supervision of cross-border business, EIOPA will keep on monitoring the effective application of the Decision on the collaboration of the insurance supervisory authorities, in particular encouraging the extension of the scope of the College of Supervisors to cover FoS and FoE material issues.

3.418. However, since College of Supervisors are not established when the cross-border activity is limited to FoS and FoE, the NCAs cannot benefit from an established binding supervisory tool, where home and host supervisors can discuss issues and reach decisions. Hence, EIOPA's role could be strengthened by setting up specific tasks and powers to address the challenges faced regarding cross-border issues by creating and supporting the co-operation between home and host supervisors, including more clear powers to initiate the establishment of co-operation platforms. Moreover, it would be important for EIOPA to be informed at an early stage of cross-border developments, that can be a source of potential issues and to play a co-ordination role to manage and efficiently conclude on-going cross border issues among home and host supervisors, for instance in the situation of a fitness and propriety dispute, where challenges arise due to the lack of harmonization on the requirements and the assessments.

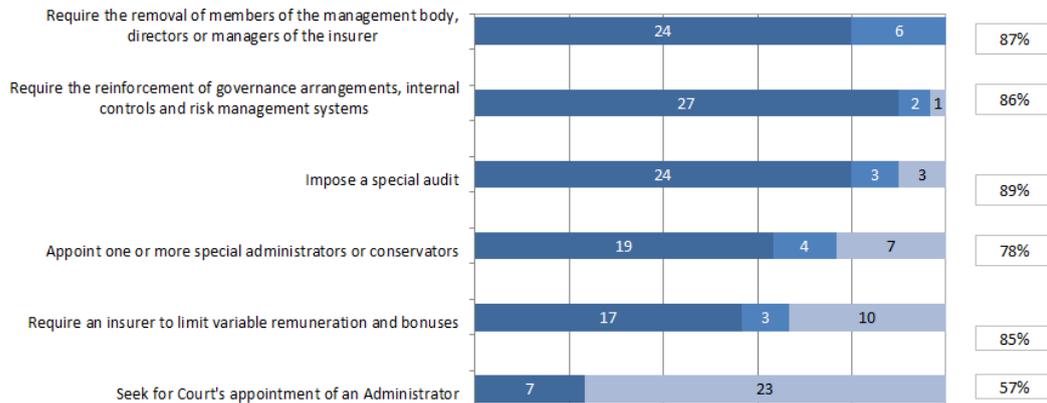
3.419. EIOPA is of the view that the information regarding cross-border business be enhanced in the Solvency II reporting package given its importance from a prudential perspective. The current requirements were designed to comply solely with Article 159 of Solvency II which is mainly addressing statistical needs and should be reviewed having in mind prudential needs of both home and host supervisors.

Annex I: Powers available to NCAs to intervene at an early stage based on a survey carried out in 2017.

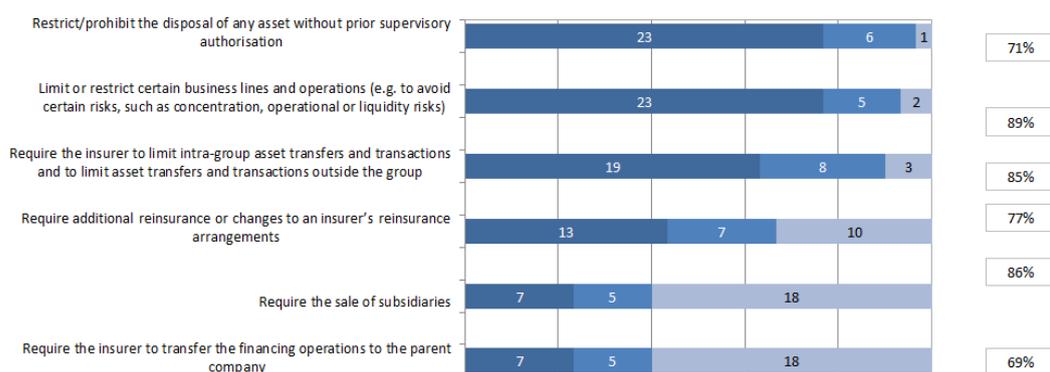
A) Powers aimed at restoring capital adequacy



B) Powers affecting management and governance



C) Powers affecting the business and organization



D) Powers affecting the shareholders



Source: EIOPA (2017).

Note: Survey carried out in 2017 (sample: 30 NSAs). NCAs were asked to identify the powers they have at their disposal to intervene at an early stage. The right-hand figure shows whether the power can also be exercised before the breach of the SCR.

ANNEX II – IGTs and RCs (Data Analysis)

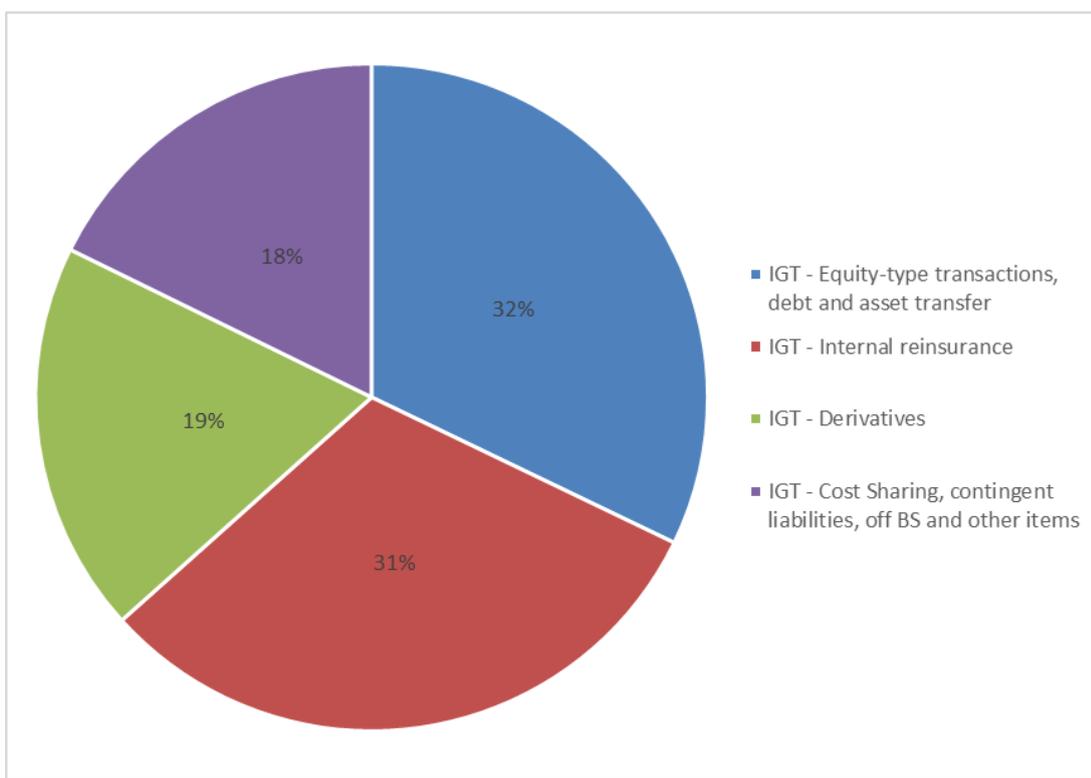
Intra-group transactions

Section 1 on intra-group transactions shows the different types of intra-group transactions based on the number of reported transactions. Section 2 sets out the amount of intra-group transactions against own funds or technical provisions for each group. Finally, section 3 provides information about the subcategories and issuers and investors of each intra-group category. All figures follow from the annual 2017 reporting of the templates S.36.01.01, S.36.02.01, S.36.03.01 and S.36.04.01. This data was verified by NCAs and material differences were corrected.

Section 1: comparison between intra-group transactions

The number of the reported IGT transactions is mainly related to equity type transaction or debt and asset transfers (please see figure 1 below). However, care should be taken about these and further results on IGT transactions as those transactions below the thresholds set by NCA's are not included in the dataset.

Figure 1: The type of intra-group transaction by total numbers of recorded intra-group transactions



Section 2: Values of intra-group transactions compared to own funds or technical provisions

EIOPA has used the own funds as benchmark to assess the size of the intra-group transactions for each group and as an indicator for potential risk of multiple gearing of own funds items. For internal reinsurance, technical provisions are the natural counterpart.

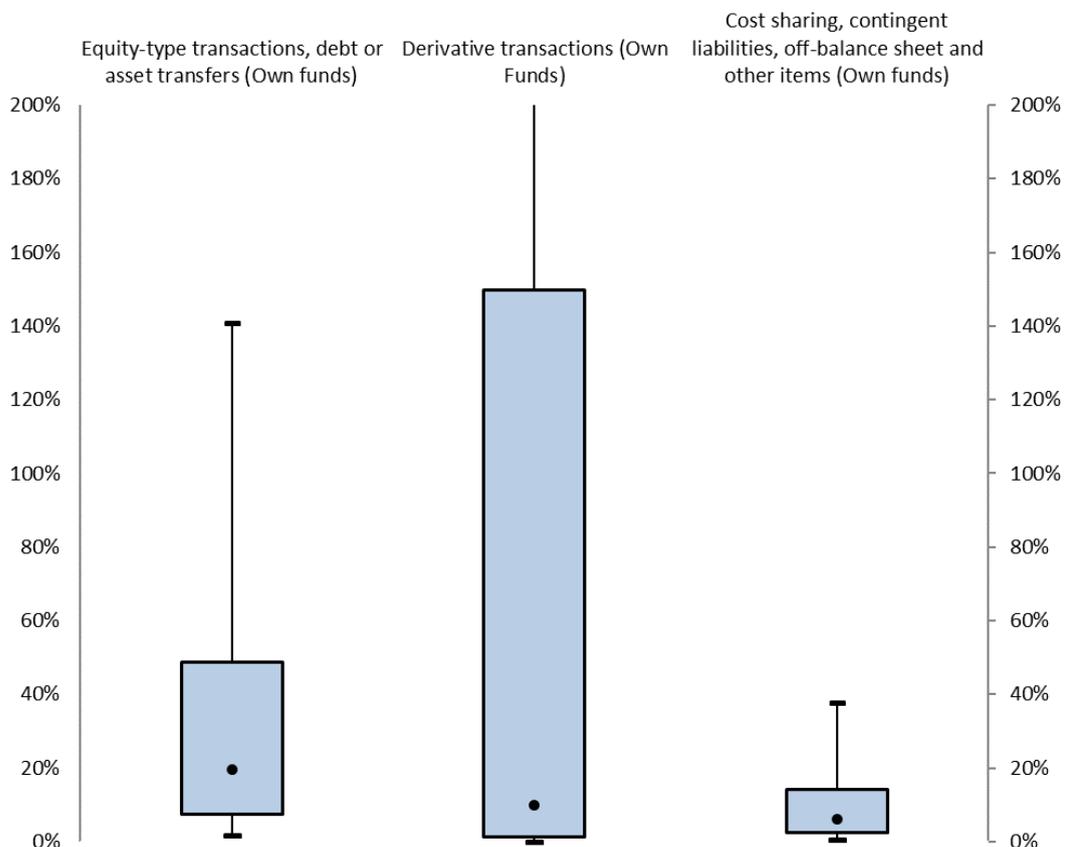
Groups reporting equity-type transactions, debt or asset transfers have a medium amount of around 20 percent of their eligible own funds invested in equity-type

transactions, debt or asset transfers (see figure x). For half of these groups, the percentage lies between seven and 50 percent (second and third quartile). Ten percent of these groups invest more than 140 percent in equity-type transactions, debt or asset transfers.

For the 14 groups reporting derivatives transactions, the medium amount of derivative transactions at the reporting date is almost 10 percent of their own funds. However, the percentage for 75 percent of the groups varies between zero and 180 percent. As the number of groups reporting intra-group transactions is lower, the distribution is also more tailed with the upper 10 percent holding more than 700 percent of their eligible own funds as intra-group derivative transactions. Please also remark that the percentages from intra-group derivatives cannot be compared to the percentages of equity or costs transactions. Intra-group derivatives are expressed as notional amounts whereas the others are expressed in market values.

However, the intra-group transactions in costs sharing, contingent liabilities, off-balance sheet and other items expressed as a percentage of the eligible own funds can be compared to the equity type transactions, debt and asset transfers. Here the amount of cost sharing, contingent liabilities and off-balance sheet and other items is substantially lower than for the equity type transactions, both in medium, the interquartile ranges and in its tails.

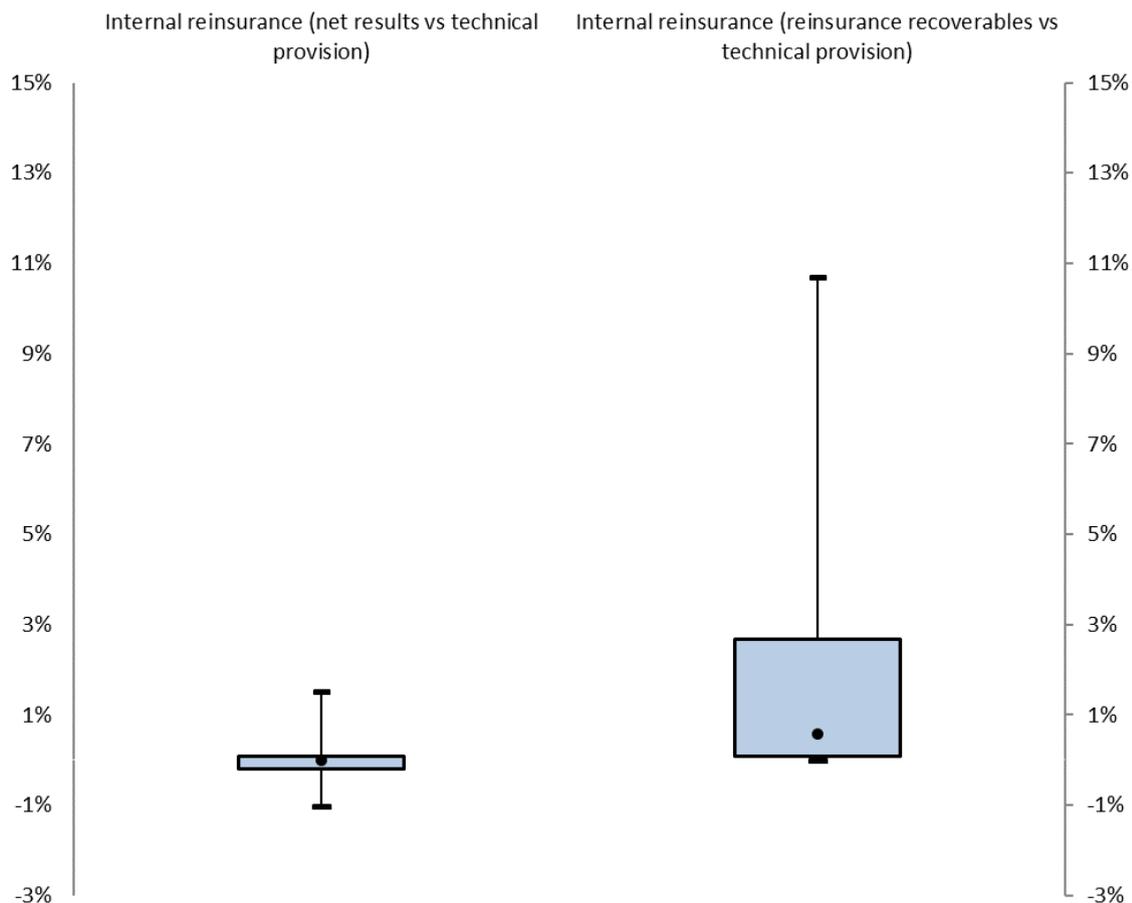
Figure 2: Intra-group equity transactions, debt or asset transfers; derivatives transactions and other transactions as percentage of the eligible own funds per group (in %; median, interquartile range and 10th and 90th percentile)



In contrast to the other intra-group transactions, internal reinsurance is compared to

the technical provisions instead of the eligible own funds. As could be expected, the net result expressed as a percentage of the technical provisions is concentrated around zero (see figure 2). Figure 2 also highlights that for half of the groups, the intra-group internal reinsurance accounts only for a small percentage of the technical provisions. For another 40 percent of the groups reporting internal reinsurance, the percentage varies between one and 17 percent.

Figure 3: Internal reinsurance as percentage of the technical provisions



Section 3: Further information on intra-group transactions

The investors – issuers of intra-group transactions

Insurance holding companies - as defined in Art. 212§ [f] of the Solvency II Directive - are the lender for circa 30 percent of the reported intra-group equity type transactions, debt and asset transfers. For the issuer, the results are more diverged between life insurers (14 percent), non-life insurers (9 percent), ancillary services undertaking (9 percent). However, the type of issuer could not be determined in 45 percent of the recorded equity type transactions, debt and asset transfers due to data quality.

Cross-border EEA intra-group equity type transactions, debt and assets transfers account for 14 percent of the total contractual balance at reporting date. The country issuing the largest amount of intra-group equity type transactions, debt and asset transfers on a cross-border EEA basis is Germany (3% from the total equity type transactions, debt and assets transfers) with France (5%) and Netherlands (4%) having entities in the scope of the group with the largest value on the lending side.

Buyers of derivative intra-group transactions are mainly life insurers (42 percent). Issuers of derivatives for intra-group transactions are ancillary service undertakings (40 percent) and mixed holding companies (36 percent). This is the case both in number of reported transactions and based on the notional amounts at reference date.

Cross-border EEA intra-group derivative transactions account for 7 percent⁶⁸ of the total notional amount at the reporting date. Belgium is the country issuing the largest amount of intra-group derivatives on a cross-border EEA basis (4% from the total derivative transactions) with Belgium (2%), France (2%) and Ireland (2%) having entities in the scope of the group with the largest amounts invested.

Reinsurers of intra-group reinsurance are reinsurance undertakings on the positive side and life insurance undertakings on the negative side based on the net results. On the cedent side, reinsurance undertakings have again the highest positive net results with non-life undertakings having the highest negative net results.

Cross-border EEA internal reinsurance⁶⁹ account for 16 percent of the total intra-group reinsurance recoverables. The country reinsuring the most is France (11% from the total intra-group reinsurance) with Luxembourg (10%) having entities in the scope of the group with the largest reinsurance recoverables as cedents.

For intra-group transactions in costs sharing, contingent liabilities, off-balance sheet and other items both the buyer and seller are very diversified considering the number of transactions. However, with regard to the value of the transactions, life insurers are most buying (41 percent) and selling (23 percent) intra-group costs sharing, contingent liabilities, off-balance sheet and other items.

Cross-border EEA cost sharing, contingent liabilities, off-balance sheet and other items account for 14 percent of the total value of transactions. The country with entities issuing and buying the most cost sharing, contingent liabilities, off-balance sheet and other items are France (5% buying and selling) and Luxembourg (5% buying and selling) .

Subcategories of types of intra-group transactions and use, where relevant

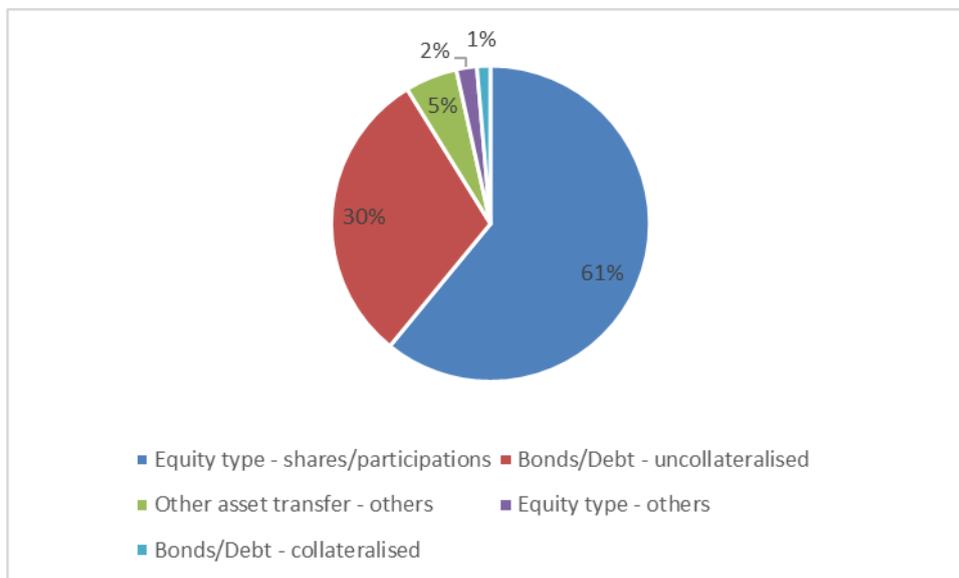
Equity-type transactions, debt or asset transfers

The vast majority of the contractual amount of equity-type transaction, debt or asset transfers relate to shares and participations in a group, followed by the exchange of uncollateralised debt (see figure 4).

⁶⁸ 51 percent of the notional amount at the reference data from intra-group derivatives flows from the Netherlands to Bermuda. Another 32 percent related to Dutch intra-group derivative transactions.

⁶⁹ Reinsurance between EEA entities in the scope of the same group.

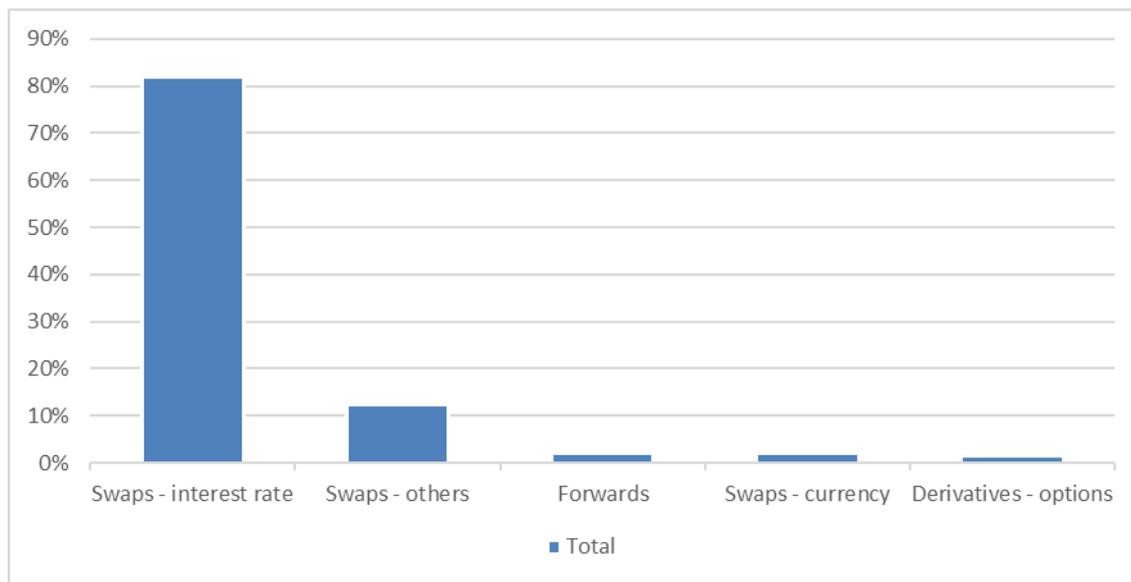
Figure 4: types of equity transactions, debt or asset transfers breakdown by percentage of total contractual balance at reporting date)



Derivatives

The vast majority of derivative transactions are interest rate swaps (see figure 5). Other derivative transactions such as credit default swaps, futures and other types of derivatives were not included in the graphs as these accounted for less than one percent of the notional amounts at reporting date.

Figure 5: types of derivative transactions (percentage of notional amount at reporting date)

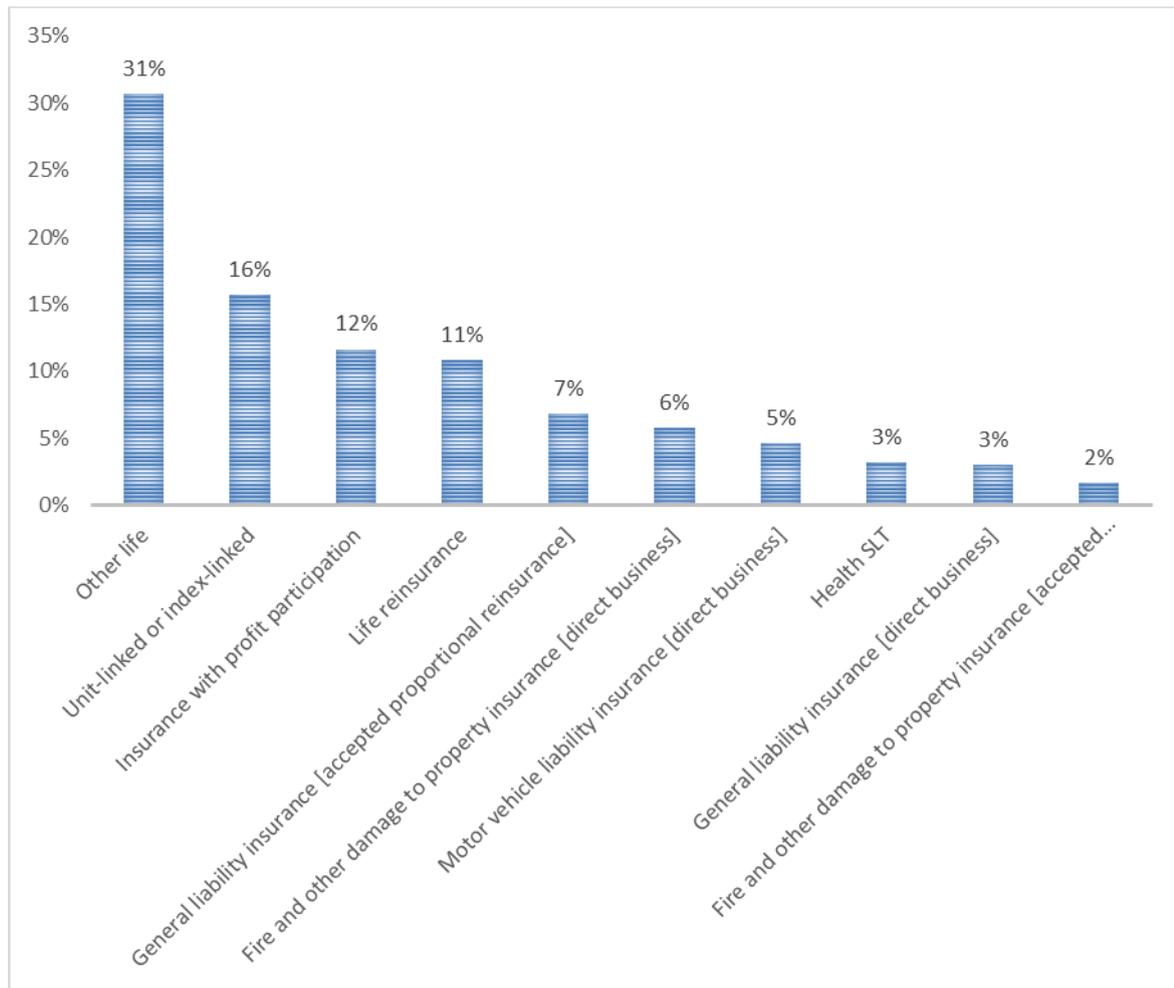


Entities in the scope of the group mostly use the derivatives transactions (90 percent) for macro hedging purposes. Another 5 percent of the intra-group derivative transactions were used for efficient portfolio management. Other possible uses for derivative were hardly mentioned as the arguments for the use of intra-group derivative transactions.

Internal reinsurance

Most of the internal reinsurance refers to life insurance products (see figure 6). Together⁷⁰ these account for 54 percent of the reported amounts of internal reinsurance. Intra-group reinsurance for unit or index linked products covers 16 percent of the products and the remaining 30 percent non-life. Lines of business that were not included in the chart below are account for less than one percent of the total reinsurance recoverables.

Figure 6: line of business of internal reinsurance breakdown by total reinsurance recoverables



Almost 70 percent of the reinsurance contracts (expressed by total reinsurance recoverables) are quota contracts. Financial reinsurance contracts account for around 15 percent and other non-proportional treaties for seven percent. Other types of reinsurance contracts account for two percent or less of the total sum of reinsurance recoverables.

Cost sharing, contingent liabilities, off-balance sheet and other items

From the total value of transactions, collaterals or guarantees, around 55 percent relates to contingent liabilities with the remaining 45 percent split between other intra-group transactions (26 percent) and cost sharing (19 percent).

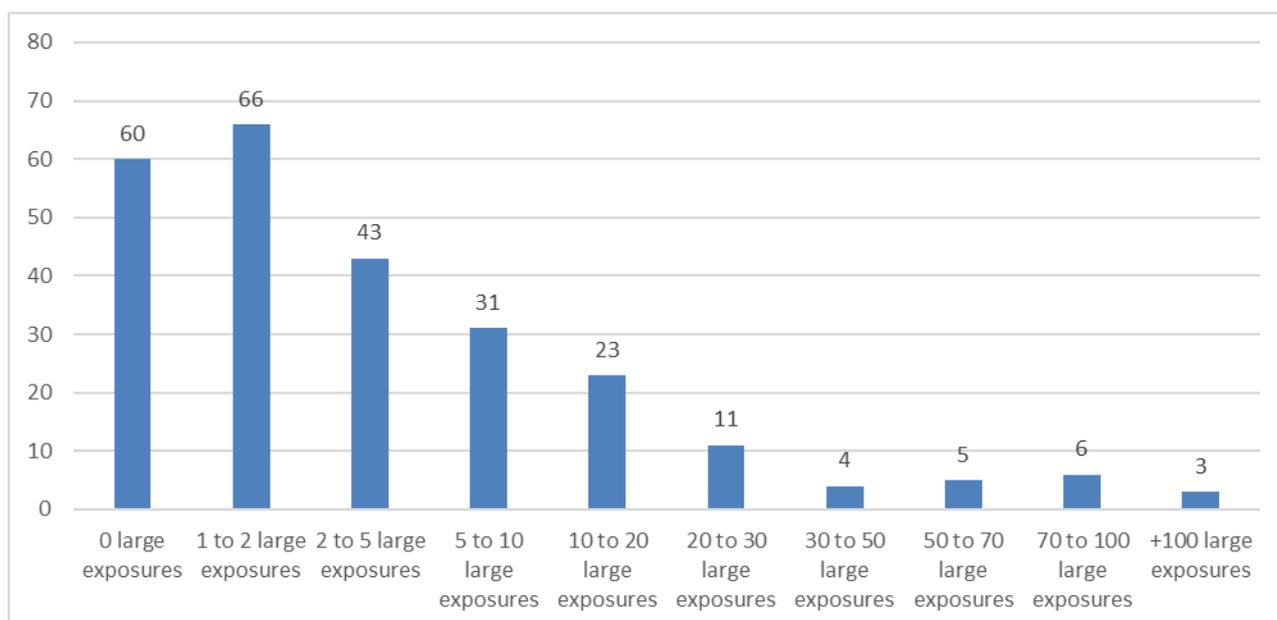
⁷⁰ Other life + Insurance with profit participation + life reinsurance

Risk concentration

The risk concentration was calculated based on the exposures reported in template S.37.01 on risk concentration. 245 Groups reported exposures in this templates. The threshold to report exposures is fixed by the group supervisor after consulting the group itself and the college. The figures used were verified by NCAs and material differences were corrected. Based on these figures, risk concentrations were calculated for large exposures, assets, liabilities and off-balance sheet items as well as for sectoral risk concentration and country risk concentration.

Large exposures are measured as 10 percent of the tier 1 capital (restricted + unrestricted). 25 percent of the 245 (re)insurance groups that reported S.37.01 do not have any large exposures. On the other hand, three groups have reported more than 100 transactions defined as large exposures (see figure 8).

Figure 7: Risk concentration based on measurement of exposures



Furthermore, a normalised Herfindahl-Hirschman index⁷¹ was calculated to assess the risk concentration for assets, liabilities and off-balance sheet items as well as for the sectoral risk concentration and country risk concentration (see figure x). While no benchmarks were defined the figure x should be interpreted as the, the lower the index, the less risk concentration occurs.

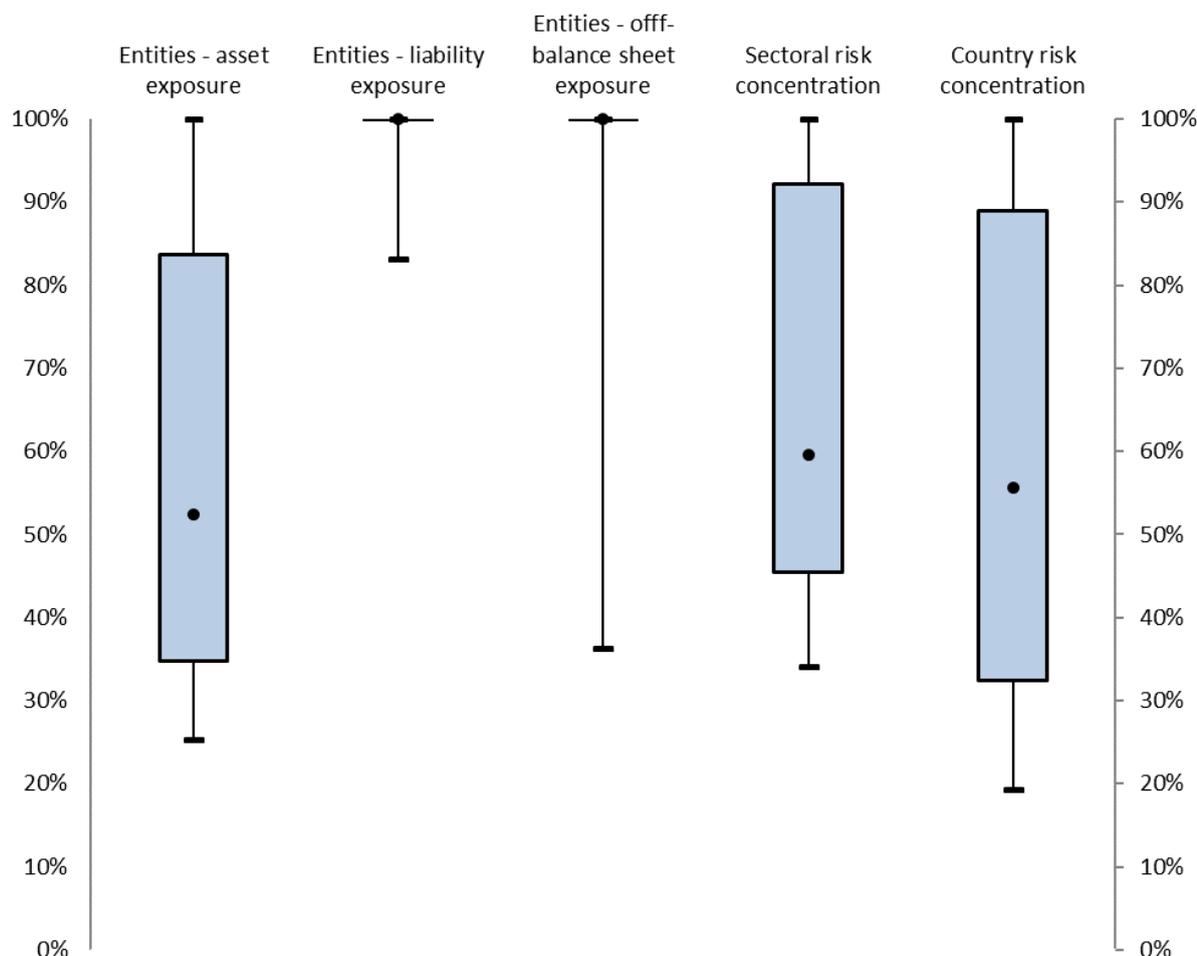
On average, the risk concentration towards its sub-entities is relatively diversified when it comes to the assets. However, the risk becomes very concentrated considering liabilities or off balance sheet exposure. This is because most groups have a diversified asset portfolio including bonds, equity, reinsurance and 'others', on the asset side while liability exposures are concentrated on either insurance, loans or 'others' with only a few companies having reported exposures in more than one category. For the off-balance sheet items, the strong concentration by the fact that only few groups have reported off balance sheet exposures (34 (re)insurance groups)

⁷¹ The Herfindahl-Hirschman index (HHI) is a measure of market concentration. It is calculated by squaring the share of each variable and then summing the resulting numbers.

and only eight of them have reported exposures to both types of off balance sheet items.

Also for the sector risk or country risk⁷², there are on average higher concentration ratios. This is the result of the large exposures to the financial sector as well as the concentration of exposures in the home member state compared to other countries.

Figure 8: Risk concentrations by type of exposure



In general, the number of entities that are part of a group has a negative correlation with the country risk exposures measured in figure 9. For example, in the plot below on the country risk exposure, the higher the number of entities of a group, the lower its risk concentration⁷³. This is also the case for the other risk indicators included in figure 8. There is also a correlation between the solvency ratio and the sectoral risk concentration as noted in Figure 10: Groups with a higher Group SCR ratio tend to have more diversification in their exposures vis-a-vis different sectors⁷⁴. Please also note that groups that reported only exposures to a single sector heavily affect the trend in this graph.

⁷² Around 10% of the records do not include the country of the exposure. These records were not included in the indicator for the country risk concentration.

⁷³ (Re)insurance groups with more than 200 entities have not been included in the graph for graphical purposes but are included in the trendline.

⁷⁴ (Re)insurance groups with a group solvency ratio larger than 400 percent have not been included in the graph for graphical purposes but are included in the trendline.

Figure 9: Country risk concentrations by number of entities in a group

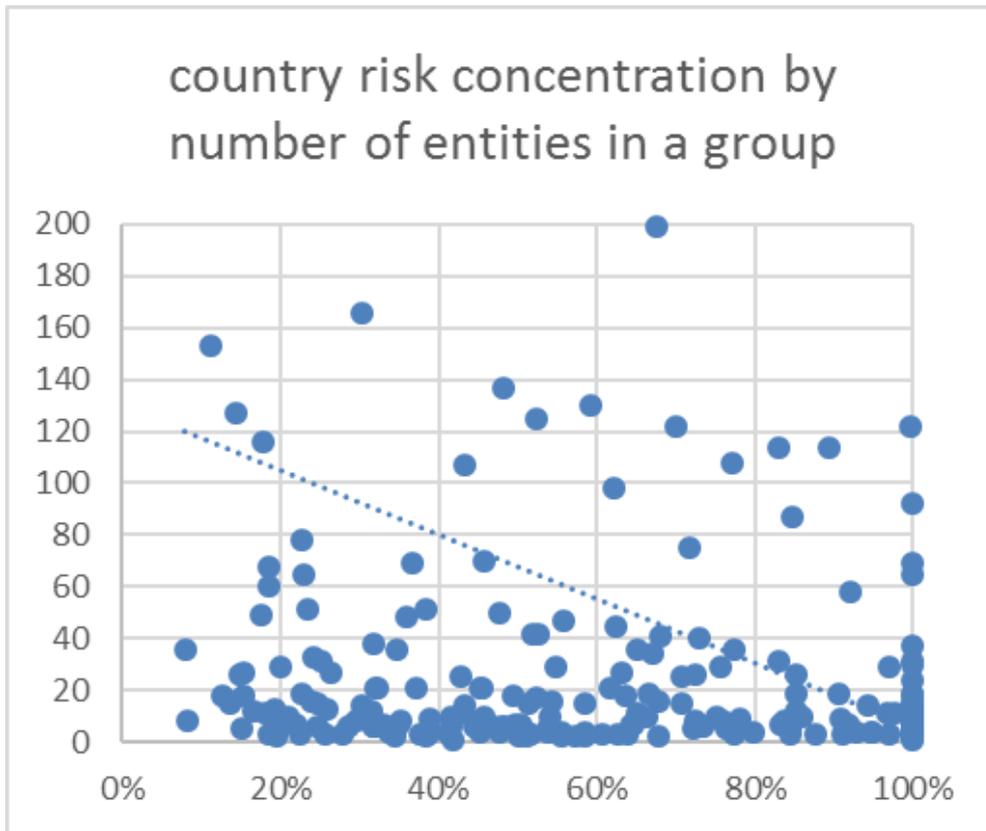
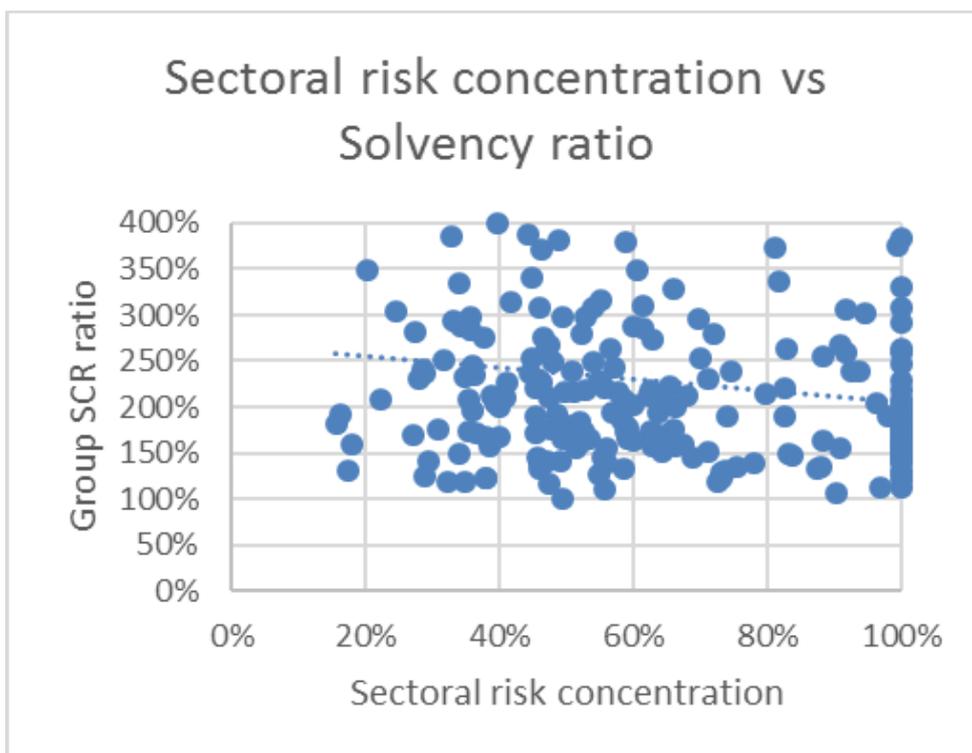


Figure 10: Sectoral risk concentrations vs solvency ratios



ANNEX III- Non Available Items in Accordance to Article 330 of the Delegated Regulation (Data Analysis)

The amount and nature of non-available own fund items in accordance with Article 330 of the Delegated Regulation (EU) 2015/35, and of the major legal and regulatory barriers to transferability;

Non-available items are extracted from the table S.23.04.04.11 in the below table.

	Sum of totals in million euro
Non available minority interests	21,847
Non available own funds related to other own funds items approved by supervisory authority	6,134
Non available surplus funds	16,796
Non available called but not paid in capital	49
Non available ancillary own funds	24
Non available subordinated mutual member accounts	0
Non available preference shares	21
Non available Subordinated Liabilites	464
The amount equal to the value of net deferred tax assets not available at the group level	1,269
Non available share premium account related to preference shares at group level	0
Total non-available excess own funds ⁷⁵	46,604

⁷⁵ This the total of the non-available items as calculated using data available at 31 December 2017.

ANNEX IV- Main barriers/ restrictions to asset transferability posed by national law regarding insolvency and winding-up legislation

In case of insolvency/winding up:

- 1.1. In case of insolvency/winding up of an insurance undertaking, some NCAs have the power to restrict or prohibit the free disposal of assets or introduce a forced administration. This also applies to the case if an insurance undertaking identifies that it has failed to meet the solvency capital requirement, and the NCA considers that its financial condition continues to deteriorate.
- 1.2. In some NCAs, the restrictions/barriers will depend on the decisions taken by the appointed public body that will be engaged with the liquidation. In others, the NCAs intervention powers may be exercised once the court has agreed to NCA's judgment that there are signs of a negative development regarding the solvency of the insurer and this development will not be reversed sufficiently or in good time.
- 1.3. Some NCAs have the power not to allow an insurance undertaking to establish close links with third parties, or to require such links to be terminated if they can threaten the financial condition of the insurance undertaking. This is also the case if they hinder NCA to exercise its supervisory functions.
- 1.4. EIOPA is aware of the following barriers applicable in the different Member States once a liquidation proceeding is opened. Please read this as at least one NCA indicating a potential barrier:
 - The insurance undertaking may perform only the insurance activities that are necessary and appropriate for the completion of the liquidation procedure and the tasks required for the transfer of the insurance contracts to the other insurance undertaking.
 - The structure of assets as registered in accordance with the law shall not be changed unless approved by the competent authority. Only pure administrative mistakes are allowed to be corrected. The return of the bankruptcy trustee and the value of the clear premiums received between the opening of the bankruptcy proceedings and the moment of payment of the insurance compensations are added to the assets.
 - The (re)insurance undertaking (incl. related undertakings) will not be allowed to make payments, to dispose of or transfer any assets to its shareholders, directors or any related undertaking, which is a subject to direction of its shareholders.
 - Claims for the repayment of the subordinated obligations and the claims of the shareholders will be settled after all other claims. Claims on the assets of each solo company will follow a specific prioritization (first are direct policyholders and beneficiaries of the solo undertaking under liquidation). Assets at the amount of the Minimum Capital Requirement are used primarily to settle claims arising from the insurance business.
 - Within the legally defined period from the date of publication of the notice of liquidation the creditor, and on behalf of the debtor, the

liquidator may file for legal action before the court to contest contracts concluded by the debtor.

- In case of possible sending in the bailiffs the operations of the preceding two years on insolvency can be subject to revision with a possibility of retroactivity.
- In case of insolvency or in case of substantial differences from the financial projections submitted to the NCA used as a basis for issuing the authorisation, the NCA can request the undertaking, to maintain in the country assets which are equal to the whole or a specified proportion of its liabilities in respect of the business carried in the country.
- In order to protect policyholders in case of unpredictable variations in the technical result the non—life (re)insurance undertakings have, under specific circumstances, the possibility to allocate profits to an untaxed reserve, the contingency reserve which to be used only to cover losses arising in the specific related undertaking, i.e. where this reserve is located. The reserve will be dissolved in case of undertaking winding-up.
- Other barriers include non-distributable reserves which contribute to own funds under Solvency II; deferred tax assets which might not be used by other group companies; pension scheme surpluses included in own funds which might not be repaid by the pension scheme; restriction on sharing of profits or of other asset items.

In case of capital management:

1.5. EIOPA is aware of the following main barriers to asset transferability in case of capital management:

- Assessment procedure of the shareholders propriety requirements in case of acquisition of significant participations in local insurance company.
- If NCA determines that the insurance undertaking significantly violates risk management rules, it may issue a decision imposing a prohibition or restriction on the free disposal of assets.
- One NCA may challenge transactions and exposures between group institutions, which are not compliant with the National Act on financial institutions and financial groups.
- In most Member States, there is a prudent distribution of dividends based on the particular year's operations. The insurance company may not make a group contribution to another subsidiary of the group and may affect any distribution from its own funds to a shareholder only in the cases defined in the law and from the taxed profit for the current year, or from the untied retained earnings supplemented by the previous financial year's after-tax profit. If the limited company's equity capital is below its share capital or it will reduce or drop below the share capital after the distribution then the distribution cannot be made.
- In one NCA life insurance undertaking may not make a group contribution to other group institutions except as otherwise provided in the undertaking's articles of association.
- In some jurisdictions, an insurance undertaking may not without consent from the Ministry of Finance provide a loan or guarantee in favor of another institution in the same group. The NCA may set a limit to the overall insurance undertaking's deposits in the bank in the

same group.

- Another example noted refers to Life insurance companies which may not distribute profits due to legal restrictions imposed in the national Insurance business act. Therefore, any surplus from these undertakings cannot cover losses elsewhere in the group independently of the situation (insolvency, winding-up or going concern).
- Certain types of insurers (in particular life and health insurers) need to have an asset trustee for assets covering the technical reserves. The transfer, sale, encumbering of such assets requires the approval of the trustee. The approval is granted if after the transfer of assets, the remaining assets are sufficient to cover the technical reserves.
- The (re)insurance undertaking (incl. related undertakings) will not be allowed to make payments, to dispose of or transfer any assets to its shareholder, directors or any related undertaking, which is a subject to direction of its shareholders.
- Shareholders contributions in share corporations are not to be restituted except in performance made where there is a control agreement or profit and loss absorption agreement; performance is covered by a fully recoverable claim vis-à-vis the shareholder to counter-performance; restitution of a shareholder's loan.
- In some NCA for mutuals, it will not be possible to call on members to cover losses in other parts of the group while it won't be the case for other NCAs.
- Requirement of an Arm's length-agreement for any granting of money within a group.
- Not allowing insurance companies to take on debt via loans etc. except taking on debt which is structured as an own fund item.

ANNEX V- Overview of existing MID schemes and national IGSs⁷⁶

Country	Part A		Part B	
	Name of MID body	Name of IGS	Type of business lines covered by IGS	
Austria	Austrian Insurance Association	Deckungsstock ⁷⁷	<ul style="list-style-type: none"> • Non-life insurance: Health and accident insurance, as far as these are operated in a manner similar to life insurance • Life insurance: All types of life insurance 	
Belgium	Fonds commun de garantie belge / Belgisch Gemeenschappelijk Waarborgfonds	Agence fédérale des Risques professionnels / Federaal Agenschap voor Beroepsrisico's	<ul style="list-style-type: none"> • Non-life insurance: Medical expense insurance, income protection insurance and workers' compensation insurance • Life insurance: Annuities stemming from non-life insurance contracts and relating to health insurance obligations and annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations 	
		Fonds de garantie pour les services financiers / Garantiefonds voor financiële producten	<ul style="list-style-type: none"> • Life insurance: Insurance with profit participation 	
Bulgaria	Guarantee Fund	Compensation Fund of the Guarantee Fund	<ul style="list-style-type: none"> • Non-life insurance: Motor vehicle liability insurance • Life insurance: Insurance with profit participation, index-linked and unit-linked insurance and other life 	

⁷⁶ This table only provides an overview of the existing MID schemes and IGS with a broad description of the lines of business covered. The table does not provide other information, such as the policyholders' coverage by IGS.

⁷⁷ In Austria insurers are required to establish a premium reserve fund (Deckungsstock) for life, health and accident insurance, as far as these are operated in a manner similar to life assurance. This fund is administered separately from the other assets of the insurer and constitutes a special fund in case of bankruptcy. The cover requirement corresponds to the total technical provisions established for the types of insurance. The finances of the fund cannot be used to cover losses from other insurers.

			insurance
Croatia	Guarantee Fund in the Croatian Insurance Bureau	N/A	
Cyprus	Motor insurers' fund of Cyprus (MIF)	N/A	
Czech Republic	Garanční fond	N/A	
Denmark	Danish Motor Insurers' Bureau	Guarantee Fund for non-life insurance companies	<ul style="list-style-type: none"> • Non-life insurance: Medical expense, Income protection, Workers' compensation, Motor vehicle liability, Other motor, Marine, aviation and transport, Fire and other damage to property, General liability, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance
Estonia	Liikluskindlustuse fond (Motor Insurance Fund)	Pension Contracts Sectoral Fund of the Guarantee Fund	<ul style="list-style-type: none"> • Pension contracts which are insurance contracts for mandatory funded pensions
Finland	The Finnish Motor Insurers' center	Joint guarantee payment system - Patient Insurance Centre	<ul style="list-style-type: none"> • Non-life insurance: General liability insurance (statutory patient insurance only)
		Joint guarantee payment system - Worker's Compensation Centre	<ul style="list-style-type: none"> • Non-life insurance: Workers' compensation insurance (statutory workers' compensation insurance only)
France	Fonds de garantie des assurances obligatoires de dommages	Fonds de garantie des assurances de personnes	<ul style="list-style-type: none"> • Life insurance: All types of life and health insurance
		Fonds de garantie des assurances obligatoires	<ul style="list-style-type: none"> • Non-life insurance: Motor vehicle liabilities and construction insurance

		Fonds de garantie des dommages consécutifs à des Actes de Prévention, de Diagnostic ou de Soins dispensés par des professionnels de santé	<ul style="list-style-type: none"> • Non-life insurance: Medical liabilities
Germany	Verkehrsofferhilfe e.V.	Sicherungsfonds für die Lebensversicherer	<ul style="list-style-type: none"> • Life insurance: Insurance with profit participation, index-linked and unit-linked insurance and other life insurance
		Sicherungsfonds für die Krankenversicherer	<ul style="list-style-type: none"> • Life insurance: Health insurance
Greece	Auxiliary Fund for Insurance of Liability arising out of motor accidents	Private Life Insurance Guarantee Fund	<ul style="list-style-type: none"> • Life insurance: Insurance with profit participation and index-linked and unit-linked insurance
Hungary	Kártalanítási Számla (Indemnity Account)	Kártalanítási Alap	<ul style="list-style-type: none"> • Non-life insurance: Motor vehicle liabilities in the event of insolvency of motor insurers
Iceland	International Motor Insurance in Iceland (ABÍ)	N/A	
Ireland	The Motor Insurers' Bureau of Ireland (MIBI)	Insurance Compensation Fund	<ul style="list-style-type: none"> • Non-life insurance: Motor vehicle liability, Other motor, Fire and other damage to property, General liability, Credit and suretyship, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance
Italy	Fondo di garanzia per le vittime della strada	Fondo di garanzia per le vittime della strada	<ul style="list-style-type: none"> • Non-life insurance: Motor vehicle and craft liabilities
		Fondo di garanzia per le	<ul style="list-style-type: none"> • Non-life insurance: General liability insurance for

		vittime della caccia	hunting victims
Latvia	Guarantee Fund of the Compulsory Civil Liability Insurance of Motor Vehicle Owners	Fund for the Protection of the Insured	<ul style="list-style-type: none"> • Non-life insurance: Accident, health (insurance against illnesses), motor transport (except railway transport), property insurance against damage by fire and natural disasters, property insurance against other damage, motor vehicle owner third party liability insurance, general third party liability insurance and assistance insurance • Life insurance: Life, marriage and child birth, tontine, capital redemption transactions and annuity
Liechtenstein	Nationaler Garantiefonds Schweiz / Swiss National Guarantee Fund	N/A	
Lithuania	The Motor Insurers' Bureau of the Republic of Lithuania (MIB)	N/A	
Luxembourg	Luxembourg Motor Guarantee Fund	N/A	
Malta	Protection and Compensation Fund	Protection and Compensation Fund	<ul style="list-style-type: none"> • Non-life insurance: Medical expense, Workers' compensation, Motor vehicle liability, Other motor, Fire and other damage to property, General liability, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance • Life insurance: Life and annuity, marriage and birth, permanent health insurance, pension fund management, social insurance
Netherlands	Waarborgfonds	N/A ⁷⁸	

⁷⁸ In the Netherlands there is currently an early intervention arrangement in place for life insurers. This arrangement is financed by life insurers with a capacity of maximum € 135 million and can be used to enable a portfolio transfer to a bridge institution or fund a reinsurance arrangement. The arrangement could only be used in case the insurance

	Motorverkeer		
Norway	Trafikkforsikringsforening en ⁷⁹	Garantiordningen for Skadeforsikring	<ul style="list-style-type: none"> • Non-life insurance: Medical expense, Income protection, Workers' compensation, Motor vehicle liability, Other motor, Fire and other damage to property, General liability, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance • Life insurance: Annuities stemming from non-life insurance contracts and relating to health insurance obligations and annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations
Poland	Ubezpieczeniowy Fundusz Gwarancyjny	Ubezpieczeniowy Fundusz Gwarancyjny ⁸⁰	<ul style="list-style-type: none"> • Non-life insurance: Compulsory motor TPL and farmers TPL insurance, compulsory insurance of the farm buildings being the part of the agricultural farm, other compulsory insurance contracts • Life insurance: Life insurance contracts
Portugal	Compulsory motor vehicle insurance guarantee fund (Fundo	Fundo de Acidentes de Trabalho	<ul style="list-style-type: none"> • Non-life insurance: Workers' compensation

portfolio is deemed to be viable. With the adoption of the new recovery and resolution framework (expected in 2019), this arrangement will be cancelled.

⁷⁹ Norway has also a Workers compensation scheme and a Norwegian Natural Perils Pool.

⁸⁰ Ubezpieczeniowy Fundusz Gwarancyjny (UFG) is responsible for payment compensations and benefits to the injured parties in traffic accidents and collisions caused by uninsured motor vehicles' owners and uninsured farmers (each of these groups is obliged to have valid third party liability insurance (TPL)) and is also responsible for making payments to the injured parties in traffic accidents when the person liable has not been identified. Additionally only in case of the bankruptcy of insurance undertaking, UFG satisfies the claims of the entitled persons from:

- compulsory motor TPL and farmers TPL insurance,
- compulsory insurance of the farm buildings being the part of the agricultural farm,
- compulsory insurance resulting from separate acts or international agreements ratified by the Republic of Poland, imposing on certain entities (persons) the obligation to be insured and life insurance contracts in the amount of 50% of eligible receivables to an amount not exceeding in PLN equivalent of 30,000 EUR at the average exchange rate published by the National Bank of Poland (NBP) as valid on the date of declaration of bankruptcy, dismissal the motion of the bankruptcy declaration or discontinuance of bankruptcy proceedings or ordering of compulsive liquidation.

	de Garantia Automóvel)		
Romania	Street Victims Protection Fund	Policyholder Guarantee Fund	<ul style="list-style-type: none"> • Non-life insurance: Medical expense, Income protection, Workers' compensation, Motor vehicle liability, Other motor, Marine, aviation and transport, Fire and other damage to property, General liability, Credit and suretyship, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance • Life insurance: Health, Insurance with profit participation, Index-linked and unit-linked, Annuities stemming from non-life insurance contracts and relating to health insurance obligations, Annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations • Reinsurance: Health and life reinsurance
Slovakia	Slovenská kancelária poisťovateľov (Slovak insurers bureau)	N/A	
Slovenia	Guarantee Fund of Slovenian Insurance Association	N/A ⁸¹	

⁸¹ It should be noted that the scheme established under the MID (Guarantee Fund of Slovenian Insurance Association) is intended for the payment of:

- damages caused to injured parties by drivers of uninsured and unknown motor vehicles and trailers,
- damages caused to injured parties by uninsured aircraft or other flying devices,
- damages caused to injured parties by drivers of uninsured boats,
- claims for passengers in public transport following an accident, if the owner of the means of transport does not have an insurance contract, and
- part of the compensation not paid from the bankruptcy estate of an insurance company bound to pay damages and against which bankruptcy proceedings have been instigated.

Spain	Guarantee Fund for Compulsory third-party automobile insurance (Consortio de Compensación de Seguros)	Consortio de Compensación de Seguros ⁸²	<ul style="list-style-type: none"> • Non-life insurance: Medical expense, Income protection, Workers' compensation, Motor vehicle liability, Other motor, Marine, aviation and transport, Fire and other damage to property, General liability, Credit and suretyship, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance • Life insurance: Health, Insurance with profit participation, Index-linked and unit-linked, Annuities stemming from non-life insurance contracts and relating to health insurance obligations, Annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations
Sweden	Trafikförsäkringsföreningen (Swedish Motor Insurers)	N/A	
United Kingdom	Motor Insurers Bureau	Financial Services Compensation Scheme	<ul style="list-style-type: none"> • Non-life insurance: Broad range of non-life insurance • Life insurance: Health, Insurance with profit participation, Index-linked and unit-linked, Annuities stemming from non-life insurance contracts and relating to health insurance obligations, Annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations

⁸² In Spain, the policyholder protection scheme (Consortio de Compensación de Seguros) guarantees, in part or in full, payments made pursuant to insurance contracts in the event that an insurer fails or its licence is revoked. The scheme is funded by a surcharge on policyholders. The surcharge is a tax payable on insurance contracts. Given its nature of being a tax the principle of territoriality prevails, being the host-country principle applied for financing the system. The Consortio de Compensación de Seguros guarantees, in part or in full, payments made pursuant to insurance contracts in the event that an insurer fails or its license is revoked. The scheme is funded by a surcharge on policyholders. The surcharge is a tax payable on insurance contracts. Given its nature of being a tax the principle of territoriality prevails, being the host-country principle applied for financing the system.

Annex VI– Cases where Article 214(2) (b) of the Solvency II Directive has been applied.

Article 214 (2) (b) of the Solvency II Directive has been applied in 46 cases. There is diversity of applications from the group supervisor as the supervisor may decide on a case by case basis to include or not an undertaking situated in a third country in the scope of group supervision. Each subsequent paragraph represents one NCA:

- a. 1 case: waiving of group supervision for a 1 year period; the holding company was an insurance undertaking with 3 very small insurance licensed subsidiaries, who have in the mean time been sold.
- b. 1 case: the insurance undertaking was a related undertaking (not subsidiary) and the decision to not include that undertaking did not result in waiving group supervision.
- c. 12 cases: the undertakings not included in group supervision are located in the same country as the ultimate parent undertaking. Consequently, group supervision has been waived for 1 group.
- d. 20 cases: the undertakings are of negligible interest with respect to the objectives of group supervision. Most of the cases arise where the undertaking excluded is not in the same country as the ultimate parent undertaking. Some companies excluded from group supervision are insurance companies wholly or in majority part owned by the group parent. They are excluded because they are of negligible interest with respect to the objectives of group supervision. The NCA in this case applies Article 214 (2) (b) if the entity concerned is of negligible interest. If the exclusion of an entity would result in waiving of group supervision, then it is the NCAs view that such an entity cannot be of negligible interest. No cases resulted in a college which would otherwise have been required not being established.
- e. 1 case: the group is a national group of mutuals. An ultimate parent undertaking of the group has a participation (by owning guarantee shares) in an undertaking otherwise not belonging to the common distribution/products/marketing structure of these mutuals. The contractual relationship was loose and the parent did not have dominant influence on the undertaking, which was decided not to be included in the group supervision of that particular group. This decision did not have any college influence due to the group being domestic.
- f. 3 cases: the undertaking was not included in group supervision because it was of negligible interest with respect to the objectives of group supervision. In 2 cases, the top holding company owns the majority of the insurance company and the insurance undertaking is headquartered in the same country than the ultimate parent undertaking. In those cases, the application of Article 214(2) (b) resulted in waiving group supervision.
- g. 2 cases: the groups were purely national without further reference to foreign countries. Due to local legal situation, former mutual insurers were able to transfer their active insurance portfolio to a stock company, leaving as top holding company a mere shell company with no active insurance business and no other legal duty other than the administration of the shares in the respective stock company. This structure was a use case for the application of Art. 214 (2) b. 1 more case refers to a multinational group, with the same legal specificities as mentioned

above. The former mutual was classified as insurance holding company in 2016 because it was strongly involved in group steering. As in 2018 several measures were taken by the mutual holding which materially changed the situation, the NCA assessed the new situation and applied Art. 214 (2) b. Nevertheless group supervision now takes place at the level of the direct subsidiary of the former mutual holding. This stock company acts as holding company for all other insurance and non-insurance subsidiaries of the group. The college of supervisor remains unchanged, the coordination arrangement is in place and still effective. Intra-group transactions between the mutual holding and the rest of the group will be supervised as well.

- h. 3 cases: the excluded undertaking is located in a different member state. In both cases, the ultimate parent company is not a holding company but an insurance undertaking, which owns a majority of shares of the excluded undertaking anyway. In one of the two cases, the exclusion did not lead to waiving group supervision but led to waiving the establishment of a college of supervisors. However, there is cooperation with the concerned NCAs and the intra-group transaction reporting which includes the excluded entity is forwarded. In the 3rd case, the entity excluded is located in the same country as the parent undertaking, the latter being an insurance undertaking.

Annex VII– issues for consideration by EIOPA in the request from the Commission

3.1 Early intervention

Article 218 (4) of Directive 2009/138/EC provides that Articles 136 and 138 (1) to (4) shall apply *mutatis mutandis* at group level. However, Directive 2009/138/EC does not explicitly define measures of early intervention at group level, in contrast to Directive 2014/59/EU on recovery and resolution of credit institutions and investment firms.

EIOPA is asked to provide, *inter alia*, information on the number of notifications of deteriorating financial conditions and communications on non-compliance of the group solvency capital requirement or of a risk of non-compliance with the group solvency capital requirement within the next three months, in compliance with Article 218 (4) of Directive 2009/138/EC, and the main supervisory measures taken.

In its Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for reinsurers across their Member States, EIOPA provided some data on powers of early interventions.

If new developments have occurred since July 2017, EIOPA is requested to provide updated information on:

- 3.1.1 the number of Member States where national supervisory authorities have powers of early intervention at group level, the nature of such powers and the triggers to use them;
- 3.1.2 the number of cases of early intervention on group level by national supervisory authorities since the entry into force of Directive 2009/138/EC, and the measures effectively taken in such cases;
- 3.1.3 potential difficulties, if any, in applying early intervention measures to an insurance or reinsurance group which is also a financial conglomerate or which belongs to a financial conglomerate.

3.2 Practices in centralised group risk management and functioning of group internal models including stress testing

EIOPA is asked to provide, *inter alia*, information on:

- 3.2.7 the number of cases where the regime of centralised risk management is applied, the total number of applications in accordance with Article 237 of Directive 2009/138/EC, a description of practices in centralised group risk management and their impact on the capital allocation within the group;
- 3.2.8 any obstacle or challenges related to the use of the regime of centralised group risk management;
- 3.2.9 cases where group internal models differ from the ones applied at solo level, including an assessment of the impact of such divergences;
- 3.2.10 the number of cases where Article 231 (7) of Directive 2009/138/EC was applied, and an analysis of such cases;
- 3.2.11 the number of cases where Article 233 (5) of Directive 2009/138/EC was applied, and an analysis of whether all risks existing at group level are properly covered in such cases;
- 3.2.12 supervisory practices to include in the group solvency calculation, undertakings outside the scope of group internal models, including an assessment of the impact of potentially divergent approaches.

3.3 Intra-group transactions and risk concentrations

EIOPA is asked to provide, *inter alia*, information on:

- 3.3.7 the scope of intra-group transactions which are reported by insurance and reinsurance groups;
- 3.3.8 any gap which may have been identified by national supervisory authorities in the definition of intra-group transactions as provided in Article 13 (19) of Directive 2009/138/EC;
- 3.3.9 the nature and volume of the main intra-group transactions and risk concentrations reported by insurance and reinsurance groups;

- 3.3.10 the number of cases of application of Article 213 (3) of Directive 2009/138/EC and the impact and challenges of the application of such provisions on the supervision of intra-group transactions within an insurance group;
- 3.3.11 potential divergent practices of supervision of intra-group transactions and risk concentrations, and their impact;
- 3.3.12 the number of cases where group supervisors applied enforcement measures in accordance with Article 258 (1) of Directive 2009/138/EC, and the triggers and content of such measures.

3.4 Diversification effects between undertakings of a given group

Recital 101 of Directive 2009/138/EC provides that global diversification of risks that exist across all the insurance and reinsurance undertakings in a group should be taken into account when calculating the consolidated Solvency Capital requirement.

EIOPA is asked to provide, *inter alia*, an analysis of:

- 3.4.3 the amount and allocation of diversification benefits between insurance and reinsurance undertakings in a given group, which are recognized when calculating group solvency capital requirements both where the standard formula is used and where an internal model is applied;
- 3.4.4 divergences of practices on how the solo SCR might be seen as a barrier to transferability of own funds in accordance with Article 330 of the Delegated Regulation (EU) 2015/35 and their impacts.

3.5 Mediation of supervisory disputes

EIOPA is asked to provide, *inter alia*, information on:

- 3.5.3 the number of cases where binding and non-binding mediations were requested to EIOPA, and an analysis of such cases;
- 3.5.4 how EIOPA monitors the correct application of the decisions made by an EIOPA's mediation panel.

3.6 Barriers to asset transferability

EIOPA is asked to provide, *inter alia*, information on:

- 3.6.7 the main barriers in national insolvency and winding-up legislation to asset transferability within insurance and reinsurance groups in the EEA as well as to their efficient capital management;
- 3.6.8 the main company or corporate law barriers to asset transferability between insurance and reinsurance undertakings within a group, in particular in a cross-border context;
- 3.6.9 the amount and nature of non-available items in accordance with Article 330 of the Delegated Regulation (EU) 2015/35, and of the major legal and regulatory barriers to transferability;
- 3.6.10 potential divergences between national supervisory authorities in assessing the availability of any own fund at group level, and their impact;
- 3.6.11 potential divergences in assessing whether own-funds can be made available within a maximum of 9 months in accordance with Article 330 (1) (c) of the Delegated Regulation (EU) 2015/35, and their impact;
- 3.6.12 the main obstacles to transferability of assets where related insurance or reinsurance undertakings are headquartered in third countries.

3.7 Level of protection of policy holders and beneficiaries of the undertakings of the same group, particularly in crisis situations

EIOPA is asked to provide, *inter alia*, information on:

- 3.7.1 the functioning of crisis management groups, the way group supervisors and solo supervisors cooperate in crisis situations, in order to ensure an equivalent level of protection of policyholders and beneficiaries of the same group, and the issues identified that could potentially limit the protection of policyholders and beneficiaries;
- 3.7.2 potential problems in crisis situations for cross-border groups arising from national supervisory authorities focusing on the protection of policyholders in their Member States, even when the measures taken may be detrimental to the protection of policyholders in other Member States;
- 3.7.3 how recovery and resolution plans, liquidity risk management plans, and systemic risk management plans have been used in practice by National Supervisory Authorities;
- 3.7.4 potential divergences in the supervision of the classification of own-fund items of insurance holding companies, mixed financial holding companies, and subsidiary ancillary services undertakings at group level in light of Article 333 and Recital 127 of the Delegated Regulation (EU) 2015/35, and the impact of such divergent interpretations;
- 3.7.5 cases of identification of own-funds items which are not considered "free from encumbrances" in accordance with Articles 331 and 332 of the Delegated Regulation (EU) 2015/35.

3.8 Insurance guarantee schemes

In its Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for reinsurers across their Member States, EIOPA provided some data on existing insurance guarantee schemes.

If new developments have occurred since July 2017, EIOPA is requested to provide updated information on:

- 3.8.4 existing national insurance guarantee schemes and the lines of business covered by them in each Member State;
- 3.8.5 where applicable, the way of funding of the insurance guarantee schemes in each Member State;
- 3.8.6 cases where insurance guarantee schemes have been effectively used, in the context of a group.

3.9 Scope of group supervision

EIOPA is asked to provide, *inter alia*, information on:

- 3.9.5 any uncertainties or supervisory divergences in the distinction between insurance holding companies and mixed-activity insurance holding companies as defined in Article 212 (1) (g) and (h), and the impact of any divergent practices;
- 3.9.6 the number of cases of application of Article 214 (2), (a), (b) and (c), and an analysis of such cases, in particular when it concerns insurance and reinsurance undertakings which are not headquartered in the same country as the ultimate parent undertaking, and when the application of those articles results in waiving group supervision or waiving the establishment of a college of supervisors;
- 3.9.7 the number of cases of application of Article 213 (5) or (6), and an analysis of the uncertainties related to the assessment of the "equivalence" of the Provisions of Directives 2009/138/EC, 2002/87/EC and 2006/48/EC;
- 3.9.8 the number of cases of application of Article 217 of Directive 2009/138/EC, and a description of uncertainties related to the application of this article.

3.10 Group solvency calculation and group supervision

EIOPA is asked to provide, *inter alia*, information on:

- 3.10.7 uncertainties or divergences of practices in group solvency calculations and supervision between national jurisdictions when using method 1, method 2, or a combination of methods, including cases of third-country insurance and reinsurance undertakings in the scope of group supervision, and the impact of any divergent practices;

- 3.10.8 uncertainties or divergences of supervisory practices on group solvency calculation where undertakings from other financial sectors as referred to in Article 335 (1) (e) of the Delegated Regulation (EU) 2015/35 belong to the scope of group supervision in accordance with Article 213 of Directive 2009/138/EC, and the impact of any divergent practices;
- 3.10.9 cases of application of Article 228 of Directive 2009/138/EC, divergences in supervisory practices and their impact, and issues related to the application of this article;
- 3.10.10 how group supervisors take into account at group level, according to Article 242 of Directive 2009/138/EC, the capital add-ons imposed at the level of a solo related undertaking;
- 3.10.11 the application *mutatis mutandis* of provisions applicable at solo level, as referred to in Articles 230, 232, 233(6), 243, 246(1), 254(2), 256, 257 and 308b(17) of Directive 2009/138/EC, and, where applicable, the uncertainties or divergences of supervisory practices related to those provisions;
- 3.10.12 uncertainties or divergences of supervisory practices in the supervision of group solvency for insurance and reinsurance undertakings that are subsidiaries of an ultimate or intermediate insurance holding company or mixed financial holding company, as provided in Article 236 of Directive 2009/138/EC.

3.11 Freedom of establishment and freedom to provide services

EIOPA is asked to provide, *inter alia*, an assessment of:

- 3.11.4 cases where groups transformed related undertakings into branches ("branching out") since the application of Directive 2009/138/EC and two years prior;
- 3.11.5 if applicable, a lack of supervisory powers related to insurance activities conducted under freedom to provide services, or omissions of exercising such powers, including the risks of circumvention of prudential or market conduct requirements, of under-reserving, of misleading information in marketing material about compliance with capital requirements, and of lack of clarity about the identify of persons responsible for key functions;
- 3.11.6 practices on the cooperation and the information exchange among national competent authorities to ensure proper supervision of freedom to provide services.